HARRY CRAWFORD BLACK

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OF

HARRY CRAWFORD BLACK,

FOR THE KILLING OF

COL. W. W. McKAIG, JR.,

IN THE

CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF MARYLAND, SITTING AT FREDERICK CITY, APRIL 11, 1871,

BEFORE

Hon. W. P. MAULSBY, Chief Justice.
Hon. JOHN A. LYNCH, Associate Justice.
Hon. J. VEIRS BOWIC, Associate Justice.

COUNSEL FOR THE PROSECUTION:

MILTON WHITNEY, Esq., of Baltimore; ISAAC D. JONES, Attorney General of Maryland; FRANCIS BRENGLE, State's Attorney of Frederick County.

COUNSEL FOR THE DEFENSE:

Hon. D. W. VOORHEES, of Indiana; A. K. SYSTER, Esq., of Hagerstown, Maryland; FRED. J. NELSON, Esq., of Frederick, Maryland; LLOYD LOWNDES, of Cumberland, Maryland; WILLIAM M. PRICE, of Cumberland, Maryland.

WASHINGTON, D. C.:
1871.

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INTRODUCTION.

Generally around criminal prosecution gather all the degrading influences of human life. Within the prisoner's box you look for those upon whose countenance is stamped with heavy impress the evidences of crime and degredation. You listen to the case to be tried with the expectation of hearing details that sicken the heart, and tend to demoralize social law. Especially is this true of the trial of capital cases. In these, the evidence is usually of the most revolting character, marking step by step the decline of the wretched prisoner from the paths of virtue and well doing, where, perhaps, his feet had first been placed by a kind father and loving mother, into the pools of vice and wickedness until completely enveloped in their slimey depths.

But there has been within the history of criminal jurisprudence some few exceptions to the general rule; some few cases tried where the court proceedings and the surroundings of the case have been in a great measure softened by the extenuating circumstances that induced the commission of the crime and the social and moral standing of the prisoner on trial. But none within the whole range of judicial investigation where such has been the case in as great a degree as in the trial that forms the subject-matter of these pages.

The cases referred to are within the knowledge of all who have watched the progress of events in our land, and are doubtless familiar to nearly all who will peruse this work, and the difference between this and those can be easily marked by following a recitation of the facts in the remarkable and interesting trial here spread before them.

Harry Crawford Black, who occupied the prisoner's place, and was on trial for his life in this case, was born in the city of Cumberland, Alleghany county, Maryland, in May, 1846, and is consequently twenty-four years of age, but the weight of years have rested lightly on his brow, and he does not look as though he had yet crossed the threshold from youth into manhood. In his early days he seems to have received the foundation of an education, both moral and intellectual, that gave him the respect and won for him

the admiration of all who knew him, and that followed him through all the varied changes of his eventful life, and finally in the hour of his dreadful peril loomed up as the brightest phase that surrounded the investigation of the case in which he had such fearful interests involved. Indeed it may be said with emphasis that never within the pale of legal inquiry has such a character been produced upon a case of this kind. Those who had played with him in childhood, and knew him in advancing years, were called, and told of his early spotless character and amiable disposition. Those who knew him amidst carnage, and saw him surrounded with all the evil influences of prison life, come and told with what unerring aim he pursued the guiding star set for him by his early teachers, and how among those influences he was still the same good and virtuous boy he had been in childhood. Those who had seen him in the far off fields of Mexico, and the western praries, were there to testify to his spotless reputation and gentlemanly conduct while there. In fact all who were called from the four quarters of the country testified to his untarnished reputation and spotless character. In personal appearance he is what the world would call handsome, about medium height, of slender frame, with a clear, frank, manly expression of countenance, a searching black eye, and with all a most pleasing address. During the progress of the trial his manly bearing was the subject of much flattering comment. His youthful appearance and prepossessing manners won him many friends among those who had never seen him before he appeared before them as a prisoner on trial for his life. His family connections are among the most respectable in Western Maryland, and although straightened in circumstances, they hold an honored place in the estimation of the people among whom they live. He is a relative of the late Hon. J. Dixon Roman and Hon. J. Philip Roman, both of whom, when living, were recognized as leading men in the political and financial affairs of the State.

Colonel William W. McKaig, Jr., who fell by his hand, is a descendant from a long line of wealthy and highly respectable ancestors. He was the second son of the Hon. W. W. McKaig, and nephew of General Thomas J. McKaig, both of whom are known as among the leading men of the State of Maryland as representatives of her material interests. He was born April 5, 1842, in the city of Cumberland, and was consequently twenty-eight years of age. He served in the southern rebellion, and was, when the war closed, a cavalry captain. When killed he was largely engaged in

manufacturing in Cumberland, and largely enjoyed the respect of the community in which he lived. In personal appearance he was remarkably fine-looking, large in statue, but well proportioned, and was possessed of all those attractions of mind and heart that make a man a genial companion. His death was much lamented where he was known. He was killed on Baltimore street, the principal thoroughfare of the city of Cumberland, on the morning of the 17th of October, 1870; and the reader will find in the foregoing pages a full and uncolored recitation of the facts, as sworn to by the witnesses, of that killing and the circumstances attending it.

The indictment upon which this case was tried was found by the grand jury of Allegahany county, Maryland, at the October term of Court, 1870, which was in session when the tragedy took place. The trial was posponed from that term to the January term following. At the January term it was called and proceeded with, so far as to draw eight jurors, when, upon the affidavit of the State's attorney, it was removed to Frederick county for trial.

The case was called upon the morning of the 11th of April, 1871, at Frederick, with the most absorbing interest being felt in the proceedings, and probably no case was ever tried where all the elements of a fair and impartial trial were drawn together in a more eminent degree than in this case.

The Court was composed of three judges, each of whom have always enjoyed the respect of all who knew them for their ability in the practice of the profession of the law, of which they are now the exponents. The jury was composed of the most substantial and respectable citizens of Frederick county, most of them, indeed all of them, but two, were thrifty farmers, living distant from Frederick several miles, and none of them resided in the city. They were nearly all men of families and possessed of considerable means, and for intelligence would compare more than favorably with any jury that was ever impanneled for the trial of a criminal cause in a court of justice in this country. Every man upon the pannel was regarded as a reliable, worthy, and highly respectable citizen and beyond reproach in every sense of the word. Below we print brief biographical sketches of each of the judges and counsel.

William Pinckney Maulsby, Chief Justice of the sixth judicial district of Maryland, and one of the judges of the court of appeals of that State was born in Harford county, Maryland, in the year 1815, and is therefore now in the prime of a ripe, expe-

rienced manhood; he is a son of General Isreal Maulsby, who was for many years a distinguished lawyer of Harford county. Judge Maulsby received the benefits of a collegiate education, after which he studied law with his father; soon after he had commenced the practice he was elected to the State senate, and served with much ability in that body; he was afterwards, for several years, States attorney of Carroll county, Maryland, from whence he removed to Frederick, where he now resides. At the breaking out of the late war he took strong grounds against secession, and entered and served with distinction in the Union army throughout the war as colonel of the first regiment of the Potomac Home Brigade, infantry. In 1866 he was the Democratic nominee for Congress from the fourth congressional district of Maryland and was defeated by a very small majority by Hon. Francis Thomas, the Republican nominee. In 1867 he was elected a member of the constitutional convention, from Frederick county, that framed the present constitution of Maryland. He was appointed to his present position early in 1870, to fill the vacancy caused by the death of the late Judge Melson, whose brother-in-law he was. He is the father-in-law of Hon. John Ritchie, the present member of Congress from the fourth congressional district of Maryland. Judge Maulsby has always been regarded as among the leading legal minds in the State, and brought to the bench a knowledge of the law, and its practice gained by a long and eminently successful career as an attorney.

John A. Lynch, one of the associate justices of the Circuit Court, of the sixth judicial district of Maryland, is the son of Hon. William Lynch, who was at one time one of the most prominent politicians of Western Maryland. The subject of our sketch was born in 1825, in Frederick county, Maryland, was educated at Pennsylvania College, Gettysburg, Pennsylvania. After graduating, he began the study of the law with M. B. Luckett, a prominent lawyer of the Frederick bar, now deceased. He was admitted to the bar in 1851, and immediately began the practice of his profession at Frederick, where he has since resided. In 1855 he was elected States Attorney of Frederick county, which position he held four years. In 1867, he was elected to the position he now fills with much ability.

William Veirs Bowie, associate justice of the Circuit Court of the sixth judicial district of Mayland, was born in 1819, in Montgomery county, Maryland. His father was a native of Rouen, France, his mother a daughter of Colonel William Veirs,

of Rockville, Maryland. At an early age Mr. Bowie gave promise of more than ordinary ability, perseverance, and firmness of purpose, promises fulfilled in his later years. He studied law with the late John Brewer, Esq., a member of note of the Montgomery county bar. In 1849, being only 30 years of age, he was elected States Attorney, appointed assistant attorney general of the State, and afterward was State's Attorney of Montgomery county, which position he held by successive elections until 1867, when he was chosen to the associate judgeship. Apart from discharging the duties of various offices of public trust and the laborious pursuit of professional studies, he was for many years a leading politician of Western Maryland. In the discharge of his duties he has a pleasing, yet forcible manner, and states his opinions with emphasis and without elaboration.

Milton Whitney was born in the village of Ashburnham, Worcester county, Massachusetts, in the year 1823. His parents not having the means of educating him, his life's earlist lesson was one of sternest self-reliance and unremitting toil. He was thus made the architect of his own fortune and fame, and is essentially a self-educated, self-made man. For several years he was employed in a store in his native village. Having a strong desire for the profession of the law, he finally entered the office of Hon. Nathaniel Wood, of Fitchburg, Massachusetts, and the inspirations of ardent genius, the longing of the noble ambition that sustained him in the days of adversity, together with natural talents of high order, soon placed him among the leading men of the bar of his native State. Mr. Whitney pursued his legal studies under Mr. Wood for three years, and at the age of twenty-three was admitted to the Worcester county bar. From the beginning of his professional life Mr. Whitney was a marked man, and give evidence of those great talents which have gained for him his high position in Maryland. Soon after his admission to the Massachusetts bar Mr. Whitney married Miss Annie Weston, one of Baltimore's most accomplished ladies, and a direct descendent of John Alden, immortalized by Longfellow in his "Courtship of Miles Standish." In 1850 he removed to Baltimore, and although almost a stranger there, in a comparatively brief period he attained a high distinction. During his practice in Massachusetts he was engaged as leading counsel in the celebrated murder trial of Cook, charged with having poisoned his wife fourteen years before his arraignment. In this case the notorious Dr. Webster, who was afterwards executed for the murder of Dr. Parkman, figured.

conspicuously as a witness for the State, testifying that he had discovered traces of poison in the remains after the lapse of fourteen years. The trial resulted in the acquittal of Cook. The success attending Mr. Whitney in the State of his birth was speedily increased in Baltimore. His rise was rapid and substantial. In 1853, after a residence in Baltimore of only three years, he was selected by the American party as their candidate for the position of State's attorney of that city; being elected he entered upon the duties of his office, holding it for six years; when he resigned and commenced actively the general practice of his profession. While State's attorney of Baltimore the turbulent spirit which manifested itself at that time in political partisanship, required of him, as an officer of justice, unflinching courage and the most laborious prosecution of lawlessness and crime. His course during this trying period of his professional life has given him a distinction that will be honorably perpetuated in the history of Maryland.

Among the most notable trials in which he was engaged as State's attorney, was that of Henry Gambrill, who, with three others, was convicted and executed in Baltimore for the murder of a policeman. The trial and execution of these men created intense excitement throughout Maryland, and so open and desperate was the lawlessness which had inaugurated a reign of terror in Baltimore that Mr. Whitney was met by repeated attempts upon his life; once, while making his argument for the prosecution of Gambrill, and afterward on his way home from the court-room in his carriage, fortunately escaping unhurt; but a strict guard of his house by the police force was absolutely necessary until the return of peace and quiet. In 1864 Mr. W. was engaged for the defense in the well-remembered trial of Colonel Paca for the killing of his two nephews, which attracted the greatest interest throughout the State and resulted in the acquittal of the prisoner. The last great trial in Maryland in which Mr. W. bore a leading part, previous to the recent trial in Frederick, was that of John Clare, who, having been convicted and sentenced to execution in Baltimore county, obtained a new trial in Baltimore city, resulting in his acquittal. Since his retirement from the office of State's attorney, Mr. W. has been engaged in most of the great criminal trials in Maryland, those named being but a few of the most prominent in which he has distinguished himself and established his reputation as the first criminal lawyer of Maryland. It is said by competent judges that Mr. Whitney has been engaged in more murder trials than any other lawyer in America.

The most important civil case tried by him was that of Carwick & Ramsay, *vs.* The United States. It grew out of a contract for carrying mails in New Mexico and involved the immense amount of $3,000,000, Mr. Whitney was retained by Postmaster General Blair, and the suit was decided in favor of the Government. In politics Mr. W. was reared a Massachusetts Democrat; after his removal to Baltimore he became an earnest supporter of the principles of the American party; but since retiring from office he has steadily declined taking active part in political life, though repeatedly urged to become a candidate for Congress. A firm Union man during the late war, his course was characterized by such liberality of opinion and such consistency of action that he did not render himself offensive to any who differed from him in their views of that contest. Since the war he has never given his adhesion to the radical measures of the party in power. In person, Mr. W. is delicate, features regular, showing great power, facial expression; bright, steady eye that sees everything and holds everybody under its spell; well-shaped, mobile mouth; his voice clear and sonorous. In style, his elocution is finished—often impassioned, his language chaste and forcible, with manner and gesture graceful and appropriate. He has a special talent in cross-examination. He reads witnesses, and while always courteous and forbearing, makes the most of all the knowledge within his reach. It requires more of the art of concealment than most men possess and more fencing than many lawyers can avail themselves of to keep from him what he desires to be brought out in cross-examination, and from the beginning to the end of a case he is ever on the alert, always vigilant and tireless, employing every honorable means to insure success. Mr. Whitney's legal knowledge is profound; trained from early boyhood to habits of close mental application, and disciplined by necessity in methodical ways of business life, he has mastered the intellectual difficulties of his profession with a zealous and comprehensive ability, and is justly considered the ornament of that profession which Edmund Burke characterized as "the pride of the human intellect and the collected wisdom of ages, combining the principles of original justice with the boundless variety of human concerns."

Isaac D. Jones was born in Somerset county, Maryland, on the 1st day of November, 1806. He was educated at the Washington Academy, in that county. He studied law in that county, and was admitted to the bar in 1832. He was a delegate from that county to the General Assembly of Maryland, at the December

session, 1832–'33, and again in 1835 and in 1840–'41. He was elected in May, 1841, to represent the first congressional district of Maryland, in the Congress of the United States, which assembled in extra session, in May, 1841, and served during the three sessions of that Congress. After this service, he was for many years engaged in the practice of law, and in agricultural pursuits at Princess Anne, in Somerset county, Maryland. In April, 1864, he was elected a delegate from that county to the Constitutional Convention which met at Annapolis in April 1864, and framed the Maryland constitution of 1864. In November 1866, he was elected a delegate from Somerset county, to the General Assembly of Maryland, which met in January 1867, and passed the act, which was adopted by a vote of the people, calling the constitutional convention which assembled at Annapolis, in May 1867, and framed the present constitution of Maryland. Mr. Jones was also a member of that convention from his native county. After the adoption of the constitution of 1867, at the November election in that year, he was elected to the office of attorney general of Maryland. Shortly after entering upon the duties of that office, in January 1868, he removed to the city of Baltimore, where he now resides, engaged in the practice of law, and in the discharge of his official duties, as attorney general of Maryland.

Daniel W. Voorhees, whose fame as an advocate is as broad as the limits of our common country, was born in Fountain county, Indiana, on the 26th day of September, 1828. His mother was a native of Maryland, having been born in Baltimore county, near Towsentown. He was educated at the Indiana Asbury University, and graduated therefrom in 1849; immediately began the study of the law and was admitted to practice in 1851. In 1858 he was appointed United State's District Attorney for Indiana, which position he filled with marked ability until 1861. In the latter part of 1859 he came prominently into notice in the East by his wonderful effort in behalf of Cook, one of John Brown's men, and, despite the terribly bitter state of public sentiment in Virginia against Cook, his argument in behalf of this unfortunate man elicited the warmest commendation of all who listened to it. In the West there is scarcely a criminal trial involving life that his presence is not sought, and his reputation as an advocate stands preëminently high. His effort in the Mary Harris case was one of the most brilliant on record in the history of criminal prosecution, and the one we have the pleasure to present in these pages is another evidence of his remarkable power as a speaker and logical thinker.

He has served about ten years in the Congress of the United States, and is still a member of that body. He is possessed of a kind, genial disposition, and an address that wins to him all with whom he comes in contact. He is universally admired and respected by all who know him of whatever polities or creed.

ANDREW K. SYESTER, whose leading connection with this case marks him as a man of great ability, was born in Berkeley county, Virginia, March 11, 1829. While yet a mere youth he entered Marshall College, at Mercersburg, Pennsylvania, graduating therefrom in 1850, in the fall of that year he began the study of law with Jervis Spencer, Esq., of Hagerstown, Maryland; was admitted to the bar in January, 1853, and soon after began the practice of his profession in Hagerstown, where he has since pursued it with great success. Even at the outset of his career he met with very remarkable favor from the people of his county, and in the fall of 1853 he was elected to the legislature of Maryland from Washington county. Although but 24 years of age, his parliamentary talent was very apparent, and he soon ranked with the foremost of his compeers; he served with marked ability upon the important committees of Ways and Means and the Judiciary. After two years service in the legislature, he was elected in 1855 State's attorney of Washington county, which position he held until 1859, performing with distinction the duties of his position. Soon after the expiration of his term of office as State's attorney the war broke out, and for several years the unsettled condition of the country surrounding Mr. Syester's home prevented any advancement in political life, and, until 1867, he did not again come conspicuously into notice, save in the practice of his profession, in which, during these years of battle and blood, he was rapidly gaining a leading role and gathering experience and wisdom from the events transpiring about him. In 1867, elected a member of the Constitutional Convention, he served upon some of the most important committees in that body which framed the present constitution of Maryland. Re-elected to the legislature in 1868, he served as chairman of the Committee of Ways and Means. In legislative, as well as in legal life, Mr. Syester has been eminently successful, and in private association his winning amiability and genial nature make him a popular favorite. In 1868 he was engaged to defend Mrs. Rowland, indicted for the murder of her husband; popular feeling was exceedingly strong against the prisoner, yet he obtained her acquittal, his masterly management of that case marking him as the possessor of legal talent

far above the average. He has an immense practice in the different courts of his State, a practice second to none, perhaps, in the State, and in the trial recorded in these pages, in which he was engaged, he has fully sustained his high reputation as an able advocate and profound thinker. As a high toned gentleman, thorough scholar, upright attorney, true friend, and an ornament to his profession Mr. Syester has no superior.

Frederick J. Nelson, Esq., one of the leading counsel in the defense of Harry C. Black, and the acknowledged head of the Frederick, Maryland, bar, is 38 years of age, of most pleasing, polished address and intellectual appearance. He is a native of Frederick, Maryland, the son of the late Judge Nelson, chief justice of the sixth judicial district, and one of the judges of the court of appeals, with whom he studied law; for three years was a law partner of his uncle, the present Chief Justice Maulsby; at the end of this time he went to the West, practicing law in Chicago and Missouri. He returned to his native place in 1862, and was warmly welcomed by his legal compeers, among whom he was soon recognized as a master spirit. He was elected a member of the State Constitutional Convention in 1867. As a lawyer he has a large and constantly increasing practice, in which he is eminently successful.

Lloyd Lowndes, Jr., a relative of young Blacks and the advisary counsel for the defense, is one of the rising and most promising young members of the western Maryland bar. He was born in Clarksburg, West Virginia, and is 27 years of age; of agreeable presence, bright, vivacious in conversation, keen and sagacious in argument. He graduated at Alleghany college, Meadeville, Pennsylvania; read law with R. L. Ashhurst, Esq., of Philadelphia, Pennsylvania, and attended law lectures at the University of Pennsylvania, in Philadelphia, where he graduated in 1867; he at once began the practice of law in the city of Cumberland, Maryland, and in the ardent and successful pursuit of professional duties exhibits ample evidence of natural talent; and a thorough legal and clasic training.

William M. Price, the junior counsel in this case, is now 28 years old, having been born in August 17, 1842, in Marshall county, West Virginia. He lived with his father, William T. Price, engaging in agricultural pursuits until he attained his majority, when he began the study of law with Hon. Thomas Perry, of Cumberland, Maryland, and was admitted to the Alle-

ghany county bar in 1866. Mr. Price is known among the legal brotherhood of his State as a young man of decided parts; thoroughly up in office work, a hard student, with the faculty, somewhat rare with young practitioners, of knowing how to make out a strong case in favor of his client, putting his points well, concisely, and clearly.

THE TRIAL.

FIRST DAY.

Opening of the Court—Preliminary Arrangements for the Trial—Appearance of Distinguished Counsel—The Prisoner—Impanelling the Jury—The Results of the First Day's Proceedings.

At 10 o'clock on Wednesday, April 11th, 1871, the circuit court of Frederick county, Maryland, convened at Frederick City, in special term, for the trial of Harry Crawford Black, indicted for shooting Col. W. W. McKaig, Jr., for the reason and in the manner set forth in preceding pages.

Before the hour designated for the opening of the court, the Hall of Justice was literally jammed with people, drawn from all parts of the surrounding country by the great legal importance of the contest about to commence. Intense interest and much feeling, increasing daily during the trial, was exhibited by the living sea that surged about the aisles and filled every available place for sitting or standing within the structure. Within the bar were gathered a large number of the legal fraternity, among whom were some of the leading legal men in the State, and in the crowd were very many whose names are familiar words in political current history.

At precisely 10 o'clock A. M., the three judges of the court entered, and, upon their taking their seats, the sheriff, in due form of law, opened the court for the trial of the cause.

The counsel for the prosecution and for the prisoner came in immediately after the opening of the court, and took seats at the tables provided for them. Immediately thereafter the prisoner, attended by his father and Mr. Hiram Bartgis, sheriff of Frederick county, appeared, and seated himself with his counsel.

At 10 o'clock and five minutes, Chief Justice Maulsby inquired if both sides were ready to proceed with the case.

Mr. Francis Brengle, for the prosecution, stated that they were prepared, and Mr. Frederick J. Nelson, on the part of the defense, expressed their readiness to proceed.

Mr. Francis Brengle, State's attorney for Frederick county, moved the admission to the bar of Hon. Isaac D. Jones, attorney general of Maryland, and Hon. Milton Whitney, of Baltimore, counsel for the prosecution.

Mr. Frederick J. Nelson, for the defense, asked the admission of Hon. D. W. Voorhees, of Indiana; Hon. A. K. Syester, of Hagerstown, Md.; Lloyd Lowdnes, Esq., and Mr. Wm. M. Price, of Cumberland, counsel for the defense, and all went forward and took the oath prescribed by law.

Mr. Francis Brengle stated to the court that Mr. Whitney had been appointed by the circuit court of Alleghany county to prosecute this case in the name of the State; but that, in the transfer of the record, the fact had been omitted, and he desired to ask the court what would be its action in relation thereto.

Chief Justice Maulsby replied that, as it was a matter of record, as well as well-known fact, Mr. Whitney would be recognized as the representative of the State.

Chief Justice Maulsby said that the trial would now be proceeded with, and directed Mr. Charles Mantz, the clerk of the court, to call the jury. He immediately called from the panel twelve jurors, who took their places as called in the jury box. He then turned to the prisoner, and in a deep, solemn voice, said: "Harry Crawford Black, these men that are last called are to pass between the State of Maryland and yourself on your trial for murder; if, therefore, you would challenge them, or either of them, you will do so when they come to the book to be sworn, and you shall be heard."

Hon. Isaac D. Jones, attorney general of Maryland, for the prosecution, stated that when the case was called at Cumberland, the prosecution framed the following questions, to be propounded to the jurors when called, and submitted them to the defense, who accepted them at that time, but he understood that their friends for the defense now objected to them. He would, he said, therefore, submit them to the court for whatever action they might deem proper:

1st. Have you formed any opinion as to the guilt or innocence of the prisoner at the bar?

2d. Upon what was that opinion formed—common reports, newspaper statements, or from what other information?

3d. Have you heard anything in regard to this case from any person interested in the trial; if so, under what circumstances?

4th. Have you any bias or prejudice in your mind for or against the prisoner?

5th. Would anything that you may have heard in regard to this case have any influence on your mind to prevent you from finding a verdict, according to the law or the evidence, as it may be given in on the trial?

6th. Have you any conscientious scruples upon the subject of capital punishment; if so, of what nature?

Frederick J. Nelson, on the part of the prisoner, said that it had always been the practice of this court to inquire no further than—had the juror any conscientious scruples in regard to capital punishment, or had he formed or expressed an opinion as to the guilt or innocence of the prisoner at the bar? He saw no reason why, in this case, a departure from the old rule should be made. In Alleghany county the circumstances were different; there the act was committed, and the people were enlisted either on one side or the other, and it was necessary thus to inquire, in order to obtain a jury, which was not the necessity here. He contended that the regular practice of the court was sufficient to meet the ends of justice.

Chief Justice Maulsby said that the proper time to make the objection would be when the juror is interrogated as the State wishes, and that it would render no decision until then; but there was no evident reason why more than the usual questions should be propounded to the jurors, and the court would pursue the accustomed course.

David Arnold was the first name called.

The court propounded the usual interrogatories; "Have you any conscientious scruples about capital punishment?" "Have you formed or expressed an opinion as to the guilt or innocence of the prisoner at the bar?" To which he promptly replied, "No." Mr. Voorhees looked into the face of the juror with a steady gaze for several minutes, as did Black, the prisoner, as if endeavoring to divine his thoughts. A short consultation was held among counsel, when Arnold was challenged by Mr. Nelson, for defense.

Wm. H. Boetler was next called, whereupon, Judge Lynch remarked that Mr. Boetler's brother, Dr. Boetler, of Middletown, was married to a cousin of Col. McKaig's widow. The counsel for the prisoner then asked that Mr. Boetler be excused from serving on the jury, to which the State interposed objections. The court decided that the objections must be sustained, and propounded the same interrogatories made to Mr. Arnold, to which the same reply was given. Again Mr. Voorhees tried to read the juror, and another consultation was held, when, on its conclusion, Mr. Nelson caustically said, "Challenged."

John A. Kramer was next called; challenged by Mr. Nelson. Wm. M. Feaga was the fourth man called. He was accepted and sworn as the foreman of the jury. The clerk called the names of the remaining jurors drawn, each being interrogated as above; and out of the whole regular panel nine were accepted and sworn as jurors; eight were challenged peremptorily by the defense, four were excused on account

of sickness, and three declared incompetent on account of having formed and expressed opinions regarding the guilt or innocence of the prisoner.

Mr. Francis Brengle stated that, as the regular panel was exhausted, he would ask the Court to draw from the box the names necessary to complete the panel, instead of directing the sheriff to summon talesmen from the city, as usual. He said that he believed the purposes of justice would be better served were such a course to be pursued.

Chief Justice Maulsby stated that they would draw from the box the names necessary to complete the panel; eighteen names were then drawn out.

Chief Justice Maulsby asked the counsel if the sheriff could not summon and bring into court those drawn who lived in the city, and if they failed to obtain a jury from them, then to summon those drawn from the country.

Mr. Nelson, for the defense, said that they should require all drawn to be brought into court before proceeding.

The court then, at 1 o'clock and 15 minutes, adjourned until Wednesday, at 9 o'clock A. M.

SECOND DAY.

The Jury Completed—Reading of the Indictment—Opening Statement by Attorney General Jones for the Prosecution—Witnesses for the Prosecution Sworn—Interesting Testimony as to the Killing.

Promptly at 9 o'clock a. m., April 12th, the court assembled for the second day's proceedings in the case of Harry Crawford Black, indicted for killing Col. W. W. McKaig, Jr. Immediately upon the assembling of the court Chief Justice Maulsby stated that the sheriff informed him that seventeen out of the eighteen gentlemen whose names were drawn from the box yesterday had been summoned, and were present in the court-room, and he desired to ask the defense if they were willing to proceed before the one absent could be brought in.

Mr. Nelson, for the defense, replied that they would go on.

The clerk then called to the box twelve of the jurors drawn; out of these, seven were challenged by the defense, two were declared incompetent, three being accepted and sworn. At fifteen minutes after 10 o'clock the jury was declared complete, and the following

are the names of the panel, and the order in which they were sworn:

William M. Feaga, Joseph W. Etzler, Ephraim Stoner, George W. Foreman, Henry T. Deaver, Robert Lease, Pottinger Dorsey, Benjamin P. Crampton, Jonathan Biser, George H. Fox, Micheal Zimmerman, and Daniel T. Whip.

After the jury was announced complete, the clerk arose, amid profound silence, and said: "Harry Crawford Black, hold up your hand." He then proceeded to read the indictment found against him by the grand jury of Alleghany county for the murder of W. W. McKaig, Jr., on the 17th day of October last, in the city of Cumberland, closing with the question, "What say you, guilty or not guilty?" To which Black made answer, "Not guilty."

During the reading of the indictment the prisoner listened with marked attention, hardly taking his eyes off the clerk during the entire period. There were three counts in the indictment, charging murder in the first degree, murder in the second degree, and manslaughter. The clerk completed the reading of the charge at half-past 10 o'clock, and immediately the names of the witnesses for the prosecution, one hundred and forty in number, were called.

Attorney General Jones, for the prosecution, arose and made a lengthy statement to the jury of the points relied upon by the prosecution to make their case, explaining why he appeared before them as counsel in this case. He stated that by a recent law it had become his duty, as attorney general of the State, to assist the State's attorney of any county in the prosecution or defense of cases where the interests of the State were involved, whenever application be made to him; and as he had been requested by the attorneys of both Alleghany and Frederick counties to assist in this case he had no alternative but to appear. He then referred to the indictment, read and explained the meaning of the different counts, and cited to the jury the law which was to govern this case.

Hon. A. K. Syester, for the defense, stated that they would reserve their opening statement until the prosecution had closed their testimony.

Chief Justice Maulsby, at forty-five minutes after 11 o'clock, directed the prosecution to call its witnesses.

Dr. P. A. Healey was the first witness placed upon the stand, Mr. Whitney conducting the examination for the prosecution. He testified as follows: I reside in Cumberland, Alleghany county, Maryland, and am a practicing physician there; my office is on Baltimore street, opposite where the murder was committed; Baltimore street runs east and west; I was acquainted with both

McKaig (deceased) and Black, (the prisoner.) Mr. McKaig resided on the west side of the creek running through Cumberland, and cutting Baltimore street at right angles: he had to come east to his place of business; had a foundry, which is situated on the east side of the creek, several squares distant from his dwelling, and to get to his foundry from his home was compelled to cross a bridge over the creek; my office is on the south side of the street, and the place where the tragedy occurred was on the north side of the same street, directly opposite; I was near the window of my residence adjoining my office door, and I saw Mr. McKaig cross the bridge, which is only a short distance from where I was standing, about 8 o'clock on the morning of the 17th of October last; just as he crossed the bridge he passed from the north side to the south side of Baltimore street, and passed my office; I saw Mr Black at the same time at the drug store corner of Mechanics and Baltimore streets, and opposite from where I stood, coming up; Black and McKaig met near the corner; the street is about thirty feet wide; I saw the shooting; when they were about to meet Black shot McKaig; he threw up both hands, and staggered into and across the street; Black followed, shooting four times; after McKaig got into the street he was shot; then, as he staggered to a sign-post on the opposite side of the street, was shot again; he then reeled into the middle of the street, and as he was falling Black shot him again; Black then walked past the body across the street to the sidewalk; could not tell whether he saw a pistol or not, he was alarmed; Dr. Smith and others brought McKaig into the office of witness; he was dead; witness went away, and never saw deceased afterwards.

Cross-examined by Mr. SYESTER, for the defense:

McKaig crossed the street at the end of the bridge to the side upon which Black was; there are at that place no regular stepping-stones; I saw Black at the drug store; Black was advancing; the foundry is in Centre street, and Mr. McKaig must cross Liberty street to reach it; the gentlemen were about ten feet apart when the first shot was fired; saw no pistol excepting in the office after the murder; the discharges were not in rapid succession.

Mr. SYESTER. Did you hear them say anything at any time during or after the shooting?

Mr. Whitney objected to the question, saying that the question was in the nature of a question in chief, and not in the nature of cross-examination, and was not introduced at the proper stage; the legal point he made being that the cross-examiners had no right to question beyond where they (the prosecution) left off; that when he inquired as to the firing of the last shot his examination closed. The question the defense asked was asking as to an independent fact.

Mr. Syester denied wishing to go outside of the examination in chief, but simply wanted to find out all that had occurred, and he wished to find out whether the witness had omitted anything that had occurred on that occasion.

Mr. Whitney replied that the subject-matter of the inquiry was the killing, not the speaking, and as the lips of one were sealed

in death, it was what Black said after the killing that was desired by the defense.

By Chief Justice MAULSBY:

How long after the first shot was fired did you hear anything said?

Dr. HEALY. It was after Black had crossed over to the pavement, perhaps five or six steps.

Chief Justice MAULSBY. Was he walking rapidly?

Dr. HEALY. Not very.

The Chief Justice decided that as the words were used immediately after the shooting, they could be taken as part of the circumstances attendant upon that act, and, as such, are subject for cross-examination.

Judge Lynch dissented, giving his opinion that the speaking formed a distinct act from the shooting, and, as such, not allowable in cross-examination.

By Mr. SYESTER:

Will you state now, Doctor, what Black said when he reached the pavement.

Dr. HEALY. He stood on the pavement shaking his pistol toward the body; Dr. Smith, who was bending over it, said: "Don't shoot!" Black said: "That is what you get for ruining my sister, and trying to put my father in the penitentiary, and I have still got a shot for any d——d scoundrel who says I did wrong."

Mr. George H. Gross was next called, (a witness for the prosecution.) he testified as follows: I live in Cumberland; my place of business is about sixty feet from where the tragedy took place; I am a tinner in the house of Mr. Moorehead, on Baltimore street; I was at the store the morning of the occurrence; was at the window, and looked in the direction others were looking; the first thing I saw was the flash of Black's pistol, and then saw McKaig throw up his hands and run towards the middle of the street; could not tell the relative positions of Black and McKaig; saw McKaig when killed; did not go to the body; saw the pistol in the hands of Black after the first shot.

Mr. Whitney showed a pistol, and asked if the witness could identify it. Witness could not. [The pistol was a Remington, six-barrelled, army size, self-cocking. One load was still in it.]

Cross-examined for the defense by Mr. SYESTER:

Was looking out the window; saw people below excited; saw the flash of the pistol, and then saw McKaig; when McKaig was in the middle of the street the second shot was fired; they were about four feet apart at the first fire; did not recognize either Black or McKaig before the shot was fired; did not see any weapon in McKaig's hand.

By Mr. WHITNEY, for the prosecution:

Q. Did you see anything in McKaig's hand?—A. Nothing.

Mr. WHITNEY. Q. How long after the first flash did you see McKaig throw up his hand?—A. About a second.

Mr. W. W. McKaig, Sr., was sworn.

By Mr. WHITNEY:

Q. Are you the father of the deceased?—A. Yes.

Q. Give us the date of his death.—A. The 17th of October last.

Q. Look at these clothes, and see if they are those worn by him on the day of his death.—A. They are. [The clothes were a dark bluish-looking coat and a white shirt, both having the bullet holes in them.]

Dr. Edward P. Duval was next called for the prosecution, and testified: I live in Cumberland, Maryland; am a practicing physician there; made an examination of the body of W. W. McKaig after he was killed; probed the three wounds; found the first was in the left side, between the seventh and eighth ribs, the second wound was about an inch and a half above the lower angle of the shoulder blade, the third ball entered the left side near the backbone, and penetrated forward; extracted the ball of the first wound, its direction was downward, inward, and forward; the deceased must have had his side to the person who shot him; extracted the ball in front of the lower part of the breast bone; its direction was forward, and slightly downward and inward; the direction of the third ball was slightly upward. [The witness exhibited the two balls extracted by him, and they were shown to the jury.] The effect of a shot is to create depression and exhaustion: a ball penetrating the chest or diaphragm may occasion spasmodic action; a ball entering the side would give a shock both to the mind and body; either one of the shots received would have caused the death of McKaig; he examined the body at the residence of the father of the deceased; he only made a casual examination at the office.

Cross-examined by Mr. NELSON, for the defense:

Witness made no examination of the clothing; does not pretend to be an expert; might tell by the impingement of a ball upon the clothing, if there were successive layers what direction it came from; there was no difficulty in discovering the course of the balls in McKaig's body; thinks one of the balls struck the edge of a rib, from its jagged appearance; the ball fired into the back lodged in the spinal marrow; felt satisfied of that; he examined the body about three-quarters of an hour after the body was taken into the office; only probed the wounds; made no *post mortem* examination; had been summoned by the coroner, and the jury rendered their verdict without a minute examination.

James Orrick, Jr., was next called for the prosecution, and testified as follows: I reside in Cumberland; I live between Baltimore street and the foundry of W. W. McKaig, Jr.; I recollect the morning of the killing of McKaig; I saw Black the morning of the shooting; I had my watch in my hand 15 minutes before 8 o'clock, and it was about that time I saw Black; he was looking in at the office windows of the foundry of McKaig, slowly walking upon the opposite side of the street and looking in; he walked faster after passing the foundry; I got into Baltimore street first;

I went up the street toward the railroad; I saw nothing of the shooting; it was a warm morning; he (Black) had a large brown overcoat on and both hands in his pockets.

The cross-examination did not change the tenor of the evidence.

John S. Craigen, for the prosecution, was called, and testified as follows: I reside in Cumberland; I am a druggist at southeast corner of Baltimore and Mechanics streets; I remember the morning of the killing of McKaig; I saw Black before the shooting; it was a mild morning; I saw Black on the opposite side of the street from my store; he seemed to be looking over the creek at West Baltimore street; he had on a dark overcoat; he had his hands, I think, in his pockets; it was at least half an hour before the shooting.

The cross-examination did not develope any new facts.

Cornelius Conner was called for the prosecution, and testified as follows: I am a drayman and live in Cumberland; I knew the deceased, Col. W. W. McKaig, Jr.; I saw him the morning of the occurrence; he spoke to me and I replied; I went into a store to get a drink of water, and when I came out he was laying in the street on his face; I met him at the end of the bridge when I spoke to him; the shooting was all over when I came out; I don't think I could describe the pistol; I did not go to the body, but went immediately to the foundry with the news.

The cross-examination did not alter the effect of the statements.

Chief Justice Maulsby stated that the Court desired to admonish the jury not to read any newspaper accounts of the trial, or to allow any one to talk to them, or in their presence, of the trial.

At 2 o'clock and 30 minutes the court adjourned until Thursday morning at 9 o'clock.

THIRD DAY.

The Prosecution Close their Case—Opening Statement for the Defense by Mr. Syester—Witnesses for the Traverser upon the Stand—Their Version of the Tragedy.

Even before the hour appointed for opening court, the knots of people gathered about hotel porticos and street corners, began to break up; individuals and parties wended their way toward the court-house.

At precisely 9 o'clock on Thursday, April 13, the court assembled for the third day's proceedings in the case. The apartment presented the same animated appearance as on each of the preceding days; in fact, the interest was very palpably increasing.

Judges Maulsby, Lynch, and Bowie were present. Soon after the opening of the court the prisoner entered, accompanied by his mother. Mrs. Black was dressed in deep mourning, and all the time while in court seemed to be greatly agitated.

Cook Hughey, for the prosecution, was called and testified as follows: I reside in Cumberland, Alleghany county, Maryland; I have resided there five years, and was there in October last; am an attorney-at-law; I was acquainted with both the prisoner at the bar and W. W. McKaig, Jr.; I have known the prisoner two or three years; I remember the day McKaig was killed; I saw Black on that day as I was passing to my office about half-past 7 o'clock in the morning, before the shooting he was standing within the door of the drug store of C. C. Shriver; I passed by a short distance, then returned and shook hands with him at the door, bidding him good morning, and informed him that I was under many obligations to him for escorting my mother from Cumberland to Baltimore; Black replied that he was glad to have done me the favor; as I bade him good morning Black stepped back further into the recess of Shriver's store; he had an overcoat on and wore a slouch hat, and had both hands in his overcoat pockets, when I first approached him; he offered me his left hand and did not disengage his right hand whilst I was talking with him; his right pocket seemed to be pushed out; I thought there was something more than his hand alone in it, and thought it so strange that he should give me his left hand, not being very intimate with him; after I bade him good morning I passed over to my office; I reside on Bedford street, on east side of Willis creek, about four squares from Baltimore street; Shriver's store is on Baltimore street, not quite half-way between Willis creek and the Baltimore depot, and east of Mechanics street.

Cross-examined by Mr. SYESTER:

I had passed Black standing in the drug store, and, not clearly recognizing him, I asked Mr. Wickerd, whom I met a few steps below, "Is not that young Black?" and on his replying "Yes," I went back and met Black just as he stepped from Shriver's store door to the pavement, and I said "Good morning, Mr. Black;" my eyesight is good; I supposed there was something in his pocket, because he extended me his left hand and broke away in an abrupt manner; I know Black was agent for a coal company; but do not know his business at Cumberland on that day.

Attorney General Jones stated that the State would here rest its case and would offer no further evidence, except for the purpose of rebutting the testimony offered by the defense.

[At this juncture the interest become intense, people began to crowd into the court room in large numbers, and many were unable to gain admittance. All the facts of the killing, as proved by the prosecution, had been spread before the public in the newspapers, and nothing new had yet been heard; but what would be the evidence of the defense was a mystery to all, and it was

expected the opening statement would develope the facts upon which they would rely for an acquittal of the prisoner, and in the hands of Mr. Syester, all knew that they would be eloquently and forcibly stated.]

At 10 o'clock and 8 minutes Mr. Syester arose and made the following

OPENING STATEMENT FOR THE DEFENSE.

The transaction out of which the indictment in this case grew occurred in Alleghany county, Maryland, more than one hundred miles distant from here. And yet we find ourselves confronted by you, as those to pass between the State and the life of the prisoner—strangers to him and to his witnesses.

"That the trial of facts where they arise is one of the greatest securities to the lives, liberties, and estates of the people," is a great truth that was declared, centuries ago, in the face of that tremendous engine of power and oppression, the Star Chamber of England, and it is deeply embedded in the hearts and affections of all who value the rights and liberties of the people.

It stands incorporated to-day in the present constitution of our State, as it has stood for near a century in all its several constitutions, unmoved amid the fluctuations of power, unchanged amid the changes and revolutions of sentiment that have marked the history of this State from its earliest foundation.

The prisoner has been dragged away from the face of the community before which he has gone in and out from his earliest boyhood without reproach. He has been torn from those who understood and appreciated the high character he so early won among them, and with his witnesses, all strangers to you, is before you, at the mere suggestion of the State attorney. And you are called on by the prosecution, which has dragged him here, to declare by your verdict that he shall not live, but must die.

Gentlemen, be your verdict what it may, whether it shall shut up and conclude that young life, while the dews of the morning are yet fresh upon his brow, in the solemn silence of the grave, or shall again restore him to the life of usefulness, honor, and respectability upon which he had just entered, and return him once more to the arms and affections of his wretched father and heart-broken mother—whatever may be the end of this business, let it ever be remembered that Harry Crawford Black never shunned the face of his people, never shrank from an investigation of this transaction at the place where it arose, but that he has been brought here by this prosecution to take his chances for justice and for his life before strangers.

The circumstances that led to the occurrence for which the prisoner is here to answer with his life are the most distressing and the very saddest that can be imagined. In order fully to understand them it will be necessary to go back a few years prior to the particular matter we are inquiring into.

In 1863 the prisoner, then a mere boy, not seventeen years of age, left his home and became a soldier in the ranks of the Southern army.

His family consisted only of his father and mother and one sister, Myra H. Black, not then over twenty years of age.

The deceased, William W. McKaig, Jr., was also a soldier in the same service; and upon the close of the war, in 1865, these two, with others, returned to their homes in Cumberland, Maryland. But the fortunes and worldly expectations of these two, to which they returned, were as widely different as the poles. McKaig returned to the bosom of an opulent and powerful family, and Black to the arms of one straitened in fortune and almost wholly without means.

Finding all the avenues of trade already filled in his native town, and being obliged to do something for a livelihood, he accordingly took service a few weeks after he returned home in a corps of engineers for service under Maximillian, then Emperor of Mexico. Here he remained until the death of Maximillian, which put an end to that employment, and he returned to Cumberland in June, 1866.

He remained but a very short time and went West, where he obtained employment; but, by the misfortunes of his employers, lost his situation, and returned to Cumberland sometime in the early part of 1867. Again he left Cumberland for the West, and again returned in September, 1869. At this time, through the influence of friends, he obtained employment in the Franklin Coal Company, engaged in mining, where he remained in the personal supervision of the business entrusted to him until October, 1870, when the occurrences that form the subject of your inquiry happened, and he surrendered himself to the sheriff of Alleghany county. He has been in confinement from that day to this.

I should here state that during the whole period of his confinement his relations with the company he served were in no respect changed, except so far as his personal attention to the affairs committed to his hands was concerned. He still continues to sign and endorse all the necessary papers, statements and rolls connected with the department under his supervision in prison.

In the spring and summer of 1866, as I have stated, Black was in Mexico.

William McKaig was in Cumberland—a gentleman of powerful person, of uncommon appearance, and elegant accomplishments. He knew Myra Black, the sister of the prisoner, from her childhood. He left her for the war a mere child; he returned to find her just on the verge of womanhood, with all its fair visions and bright prospects before her. He found her in the very "morn and liquid dews of life, when contagious blandishments are most imminent," and seeing this young and confiding girl, remarkable for her sprightly temper and distinguished for the strength and polish of her intellect, with no stain upon her character, no blemish upon her name, no spot upon her honor, the pride and solace of her parents, he then conceived the sinful, hideous, and unholy passion which terminated in her ruin, and the indescribable and unuterable wretchedness of her parents and brother.

It will be proven to you that McKaig was constant and assiduous in his attentions to this lady, frequently with her in public, and at all times was with her, an accepted and accredited gentle-

man. These attentions were never once supposed by the parents or any other relative of the family to have been dishonorable, and he was, therefore, received at all times upon terms of unhesitating confidence. But he abused the confidence and hospitalities of these parents to their indescribable misery and wretchedness, and he betrayed the love of this unhappy girl, to her absolute and fearful ruin. He seduced her, and from that time forth, she was but the mere creature and very slave of his passions and lusts. He was complete master of her movements, and her fears of exposure and the dread of revelations enabled him to hold that power and exercise it with remorseless cruelty.

He determined that she should remain his, to gratify his passion and minister to his depraved lust. He held her fast in his remorseless grasp, determined that nothing should withdraw her from his power until satiated with this unholy indulgence; in his own good time he saw proper to throw her back on the bosom of her family, to be scorned by herself and society and shunned by the world.

So inordinate had become his passion and so determined was he in holding on to the absolute power he knew he held over her that, when a gentleman of high character offered her his hand in honorable marriage, McKaig, with the knowledge that it was his purpose to remove to the far West with his intended bride, disclosed to him the dreadful and stunning fact that he had seduced and ruined her in the face of the world.

In October, 1866, McKaig married a Miss Hughes, of Jefferson county, Virginia. But his criminal intercourse with this unhappy girl continued. His marriage had no power to check or bridle his licentiousness. He still lived with the wretched and undone victim of his lust until the spring of 1870, when there was born to her body, the child which this day bears his image on its infant face, so plain and unmistakable that there is no room for doubt. Up to that time McKaig on all public occasions and before the face of the community held this trembling, ruined girl forth as virtuous, and accredited her as one worthy the society of the pure and blameless in life. On the occasion of his return home from his bridal trip with his young wife, a brilliant and fashionable reception and costly entertainment was given at his father's house. And there this wretched lady was an invited and honored guest. On that very occasion McKaig, before the whole company, gave her his arm and escorted her to the refreshment room, and in other ways paid her marked attention.

During all this time Crawford Black remained in utter and profound ignorance of the ruin of his sister, and the shame that had fallen on his name. His employments and engagements were miles away, and he reached his home only once in two or three weeks and then only for a brief interval, when he came to share with his mother, whom he ever loved with unexampled tenderness, part of his scanty earnings and savings. Indeed it was not until the vigilant eye of the mother discovered the situation of her daughter that one thought or shade of suspicion ever crossed her mind. Then, for the first time, did these stunned and stricken parents even imagine the possibility of the shame of their only,

their darling daughter. And into their bleeding hearts alone did that agonized and wretched girl pour little by little the story of her wrongs and ruin. Every precaution was taken by the parents to conceal the dishonor of their humble name from the world, and to save and shield their erring and ruined child from the scorn and contempt of the community. The effect of this dreadful disclosure or discovery upon the mother is beyond all description. She is a lady of superior and finished education, of refinement and unblemished character, keenly and painfully alive to the honor and respectability of her little family. Indeed, like a woman of fine understanding and strong sense, as she is, she cared for little else. She was utterly prostrate and helpless in the presence of the overwhelming calamity that dashed every cup of life with bitterness from her lips and shrouded all its scenes with unalterable gloom and irredeemable wretchedness. Day after day she sank under the heavy burden and gave way under the unendurable misery of her situation.

The no less wretched father was summoned to the contemplation of scenes of anguish and misery which reduced him to a state of absolute distraction and frenzy. Everything around him bespoke utter and irretrievable ruin. His name and his honor, the only things that remained to him, were gone, while everything around him was a memorial of shame. His wife sinking and failing before him, his daughter dishonored, scorned, and driven from the face of the world; his home shunned by the pure and blameless in life; his very name but the byword of the depraved and licentious, to be pronounced with scorn and contempt in all the high places and all the low places of the land, the standing stock of the ribald jest and the low-born sneer.

It was while laboring under influences such as I have attempted to give you but a faint outline, and goaded to madness and distraction by the contemplation of miseries which no time, no consolation could heal, and of which he was a daily and hourly spectator; it was under such influences and impulses that he resolved to visit the author of all this ruin and woe with that vengeance, which, I take occasion to say here, he most richly deserved, and which the common and universal sense of all mankind most justly and righteously approve.

He had a difficulty with McKaig in the month of June, 1870, but McKaig was not severely injured. He was soon on the streets again receiving the congratulations and honeyed commendations which wealth and great family influence can always command, no matter to what extent the character may be depraved; while the poor, scorned, ruined victim of his passion and lust sat down, clothed with the garment of wretchedness, and her bereaved and helpless parents mingled their tears and sorrows unseen, uncared, unpitied and uncomforted by those who, but lately, delighted to accept their hospitalities.

After the occurrence in June, McKaig's whole manner and relations to the family he had so fearfully wronged changed. He then came forward and openly denied having seduced the girl, declared that she had been long before, from her earliest girlhood, a prostitute. We have reason to know that those who have in

charge his name are here in this prosecution to attempt to show her character for depravity, guilt, and shame, which but lately they, as well as he, held forth to the world as a fit associate for the virtuous and the pure of heart. Nor did the vengeance of McKaig stop with simply branding the girl he had ruined as an outcast from all decency; he went further. Conscious of his own superior physical prowess, and glorying in the belief and conviction that his steady hand, his quick eye, his dauntless courage, and unerring aim would supply him with large advantages in any description of encounter he might provoke, he determined to force a bloody and deadly issue upon both the father and son of this unfortunate girl. He immediately began to browbeat and insult this boy upon all occasions when opportunity offered. We will show you, gentlemen, that he armed himself and went armed with the express purpose of killing Black at the first opportunity; that when he was killed he had on his person no less than two six-barrel revolvers, all loaded, and we expect, gentlemen of the jury, to show you that it was McKaig's intention to provoke an attack that he might kill Harry Crawford Black. On several occasions, gentlemen, we will prove to you that McKaig would go out of his way to offer an insult to this prisoner, and we expect to show you that, on the morning of the shooting when Black met McKaig and crossed over the street to the side where he was, he made up his mind that the time had come when McKaig was going to force him to defend his life, and I tell you, gentlemen, that, if he had not been supplied with a self-cocking pistol, Black would himself have been a bloody corpse from the effects of that meeting. We expect to be able to show that McKaig was the first to make the attack. And little did that proud man think that the frail boy he was pursuing for his life would prove the winner of the stake that he himself had laid. That boy had stood unmoved amid the shock of battle, and been calm and composed amid the roar of artillery and the clash of musketry, and to a great harvest of death he had also been a spectator. Driven to a defense of his own life, he was too brave a man to shirk the responsibility, and in the fight he had not provoked he proved the better man.

Gentlemen, our friends on the other side have said much about the degrees of murder; with those distinctions you have nothing to do. This young man is either guilty or not guilty. You must say either that his life shall be taken or that he shall be restored to his family and friends fully purged of the crime whereof he stands charged. They have, gentlemen, cited several passages from the law books. There is an unwritten law, as unalterable as that of the Medes and Persians, that is legibly traced upon your hearts and upon mine, and is as essential to the conduct of society as that traced within the legal commentaries. Such a law, gentlemen, has a great bearing upon this case, as you will see when we offer our testimony.

EVIDENCE FOR THE DEFENSE.

Mr. Lawrence Wilson was then called for the defense, and interrogated as to seeing McKaig insult Black a few days before the shooting, evidently for the purpose of bringing on a fight.

Mr. Whitney, for the prosecution, objected, and quite a lengthy argument took place between counsel as to its admissibility. The court held, however, that it was admissible, but Mr. Voorhees, for the defense, withdrew the witness, stating that they would offer the testimony at another time.

Mr. Charles Medore, for the defense, was called, and testified: I reside in Cumberland; I know Mr. McKaig by sight; I knew Black personally; I went to school with him; I saw a good part of the transaction that resulted in the killing of McKaig on the 17th of October last; I was at work opposite where the shooting occurred; I saw McKaig approach Black, saw Black shoot him, and a pistol fall from McKaig's hands at the first fire that Black discharged; this was followed up until four shots had been fired; Dr. Smith, Mr. Morehead, and I carried the body of McKaig into the office; I saw but one pistol, and it fell about the middle of the street, about ten feet from the curb; I unbuckled the belt around McKaig in the office, and it contained an empty pistol-holster; I saw no pistol in the office.

Cross-examined by Mr. WHITNEY:

It was between 7½ and 8 o'clock that the shooting took place; I am a shoemaker by trade; I looked out the window when I heard the first shot; it was a pretty good-sized window, the panes of glass, perhaps, 12x16; I had not taken my seat to work, having just entered the shop, and had been engaged in arranging things about the shop, as was my custom on Monday morning; whilst attending to this Charley Clark, a young lad about thirteen or fourteen years of age, and a relative of mine, had come in to have a measure for a pair of shoes taken; I was behind the counter, and was just taking out my book to enter the measure, and my back was to the door; the counter is between the door and the window; what I saw was through the window, except the third shot, which I saw through the door; when I looked out at the door McKaig was down on all-fours near my door on the sidewalk; the first shot I did not see, the second I turned and saw through the window; when I first saw McKaig he was crossing the street toward me in a kind of a trot; I don't think he (McKaig) could have been more than a step or two from the pavement when I first saw him, and was in a kind of a stooping condition, with revolver in hand; it was hanging down; I do not recollect seeing hands up; there were four shots fired; he (McKaig) was crossing the street when Black fired the second shot; the pistol had dropped about ten or fifteen feet from where the body lay after the first shot; Black followed him up, firing until four shots had been discharged; McKaig was down on all-fours near the curb at my door; he raised and went back toward where the shooting commenced, and received the fourth shot in the middle of the street; I was about twenty-five feet from him, being at the door; he was erect at the time of the fourth shot; Black was very close in front of him; Mr. Morehead, Dr. Smith, and I took up the body; I do not know whether the revolver fell from the holster; they were about eight or ten feet

apart when the first shot was fired; I only saw where one ball hit him; I told several parties I saw the pistol; one I remember was Mr. McCullough; I do not remember seeing anything else in McKaig's hands; the pistol was rather a long one; they are generally alike, except the size of them; I think it was longer than usually used; the pistol was in his hands a very short time, not a minute; I think McKaig walked ten or twelve feet, carrying the pistol in his hands; I don't think any one else assisted in carrying the body except the ones already named; I opened the shirt and saw but one wound; I think Dr. Smith, Mr. Price, and a number of others were in the office whilst the body lay there: I unbuckled the belt from McKaig's body, and found on it an empty pistol-holster.

Enos Davis, for the defense, was the next witness called, and testified as follows: I live on Centre street, in Cumberland; have been there three years, and follow carting; I knew Mr. McKaig; used to do a good deal of hauling for him; I also knew Mr. Black; on the morning referred to I was at the corner of the bridge; Mr. McKaig passed me, and we spoke to each other; he was carrying a little cane, and changed it from his right to his left hand soon after passing me; I then saw him put his hand behind him, and saw something shine as he did so; he soon met Black, and a shot was fired, but I did not see who did it; I saw McKaig drop his cane and throw up his hands as soon as the first shot was fired; I was on the lower corner of the bridge; Black was coming up street, and met him face to face.

Cross-examined by Mr. WHITNEY:

It was about 7½ or 8 o'clock when the shooting occurred, and I was hauling coal to Mr. Lowndes' law office; I left my horse and cart, and walked down the street to see about getting some hauling from Mr. Hughes; I left my cart about thirty or forty feet from the other end of the bridge from where the shooting took place; I was hauling coal from the car; I keep my cart on Court street, three or four squares from Baltimore street; I took my horse out of the stable, and went to the car and took a load of coal to Mr. Lowndes' office, but could not get into his yard; there was another colored man with me, by the name of Garner; I know Cornelius Conner, but do not remember seeing him that morning; I was standing at Ryan's corner; Mr. McKaig crossed the street, and changed his cane from one hand to the other; I saw him draw something like a pistol; I did not see him speak or shake hands with anybody until he met Black; I saw something shine; the sun was shining, and made this thing glisten; I did not see anything drawn; I told a good many persons of this matter down at the wharf; I can't remember telling any one except a colored man that I saw McKaig put his hand behind him; I saw nothing in his hands when he threw them up; the hands went up as soon as the first shot was fired; I did not see the first fire; when the second shot was fired McKaig was in the middle of the street; Black followed him; the third was fired as he attempted to raise on the pavement at the post; the fourth fire was across the street.

William Wolf, for the defense, was called, and testified: I reside in Cumberland; have live there all my life; I knew W. W. McKaig, Jr., by sight, and know Harry Black well; on the morning of the shooting I was standing on the opposite side of the street from where it took place; I was talking to Dr. P. A. Healy; I saw Black coming by Dietz's corner toward the bridge; McKaig was coming down the street; Dr. Healy called my attention to them, and said, "see those two men meet;" as they met the firing commenced; after the first shot McKaig dropped a pistol from his hand just outside the curbstone into the street; Mr. McKaig ran over to the post on the opposite side of the street, and then back to the middle of the street; when McKaig's hands went up after the first shot, the pistol mentioned dropped from them; I saw McKaig when he crossed over the bridge, and he had a cane swinging in his left hand.

Cross-examined by Mr. WHITNEY:

I was standing talking to Dr. Healy, and he called my attention to McKaig and Black; I talked it over with Dr. Healy different times since as to the occurrence; I don't know of saying to Dr. Healy that I saw a pistol in McKaig's hand, I can't say that I ever told Dr. Healy that there was no pistol in McKaig's hand; I never saw the pistol until it fell into the street outside the curbstone; I told a number around there that day after Mr. Turney picked it up; he picked it up immediately after the shooting; I think it was after the body was carried into Dr. Smith's office; Dr. Healy's and Dr. Smith's office is the same; Mr. McKaig met Mr. Conner near the corner of Canal street; I know Mr. Conner very well; I know Mr. Langgold, of Cumberland, but am not certain of having had a conversation with him about it; I have no recollection of telling Mr. Langgold in my shop, during the last three weeks, that there was no such thing as Mr. McKaig having a pistol in his hands.

After the examination of this witness the Court stated that the hour for adjournment (3 p. m.) had arrived, and the court would now adjourn until Friday morning at 9 o'clock.

FOURTH DAY.

Continuation of Testimony on the Part of the Defense—Witnesses Called to Prove the Character of the Prisoner—Interesting Evidence in Relation to the Killing.

Promptly at 9 o'clock the court met for the fourth day's proceedings. All the judges and other officers of the court were in attendance, as were all the counsel for both prosecution and defense. As usual, the prisoner was looking well and, apparently, perfectly self-possessed and calm. Around the counsel for the prosecution sat, as during the

entire proceedings, a large number of the relatives and friends of the deceased; most of them—if, indeed, not all of them—being lawyers of more than ordinary natural and legal ability. Immediately after the opening of the court—

John Hipp was called for the defense and testified as follows: I reside in Cumberland and am a brick-layer; I knew Mr. McKaig, and I know the prisoner; I saw them on the morning of the shooting; I was on the opposite side of the street, at Dietz's store, at the time, and I first saw them after the second shot was fired; my attention was called to them by the first shot; I turned around to Mr. Dietz and said, "My God, they are killing each other." McKaig ran across the street after the first fire and Black followed; I saw McKaig when he fell, and I saw a revolver in the hand of each of them; they ran across the street toward Reed's store; after the first fire both sprang off the curb-stone toward the middle of the street; McKaig fell about twenty feet from me, about the middle of the street; after the first fire I could see everything that passed, except that I did not see them when they reached the pavement on my side of the street.

Cross-examined by Mr. WHITNEY, for the prosecution:

Mr. Dietz is a brick-layer, but keeps a green grocery; I was going to work for him the morning of the shooting; I went into the back yard five minutes after the shooting; I jumped over the back yard fence; Mr. Dietz assisted me over; I did not want to go out in the street and be taken to court; after McKaig fell Dietz and I both went in the back yard, and there we remained about five minutes; he and I talked about what had occurred; I saw McKaig after the first shot; I was standing next to the door; a little girl was in the store, also; I don't know what became of her; after the first shot I turned around and looked; when I first saw Black and McKaig they were both springing away from the opposite pavement; the second shot was fired right near the curb; I only heard the first shot, and the second shot was fired while they were on the pavement; the third shot was fired about the middle of the street; the fourth shot was fired after McKaig had turned to run back; there is a post in front of Medore's shoe store; he came near to it, and turned back and fell in front of the curb at Medore's store; Black was behind him when he fired the last shot; I ran into the back yard as soon as he fell; McKaig threw up his hands and fell on all-fours; I saw the pistol in his hand when the second shot was fired; I noticed no cane; I had a full view of his face and his body; I did not see the pistol afterwards; Dietz and I talked about the affair, and I talked to some few others about it.

Re-examined by Mr. SYESTER for the defense:

Peter Yarnell came to me twice to know what I knew about it, and I told him if he did not let me alone I would break his neck. He is a witness for the prosecution.

The witness was asked to more fully explain the immediate circumstances of the shooting as he saw them; objection was made by the prosecution, as he had been examined at length on that point by the defense.

The Court said the witness could state again exactly where McKaig fell, and he said he fell near the middle of the street opposite Medore's shoe store.

George Garney, for the defense, was called and testified: I live in Washington city, and was in Cumberland on the day of the shooting; I have not been there long; I was standing on Mr. Ryan's corner, waiting for Mr. Hughes, of whom I was to get employment, and I saw the shooting; I was looking across the street at the time; I heard the report of a pistol, and I looked and saw Mr. McKaig and Mr. Black; both had pistols; after the second fire, as Mr. McKaig ran across the street, he put his hand behind him, as if to draw another pistol, but he could not draw it; he made for the other side of the street but could not reach it; after the third shot Mr. McKaig fell on all fours near the pavement; Mr. Black was on the opposite side of the pavement from that on which Mr. McKaig fell when he fired the fourth shot; Mr. Black then said: "That is what you get for seducing my sister, and I have another barrel for any d——d scoundrel who says I did not do right." McKaig had a cane and revolver in his hands, and he dropped them both after the first shot; I did not know McKaig or Black; I only speak of the man that was shot down.

Cross-examined by Mr. WHITNEY, for the prosecution:

Q. What do you mean by Ryan's corner?

WITNESS. There ain't but one corner there; everybody calls it Ryan's corner, and I call it Ryan's corner, too.

Mr. WHITNEY. How were you standing when you saw Black and McKaig?

WITNESS. I was so standing, when the first shot was fired, that I did not have to change my position to see the firing; I had been standing there about fifteen minutes when the shooting commenced; was by myself; I know Enos Davis slightly; did not see him there that morning; I did not know Mr. McKaig; I was about fifteen feet from the bridge, and could see it; I had business in Cumberland; was staying with John Carey, who lives on Independent street; that street is located seven or eight squares up town from where the tragedy occurred; I left home about 6½ o'clock to get work, and met a colored man on Baltimore street, and inquired of him for work; didn't know him and don't now; he told me of a job he had left at Mr. Hughes'; I went to Ryan's corner and met a colored man working for Mr. Hughes; came there before the firing commenced; the first colored man I met near the St. Nicholas Hotel, which is about four squares from Mr. Hughes'; I saw McKaig have a pistol as he stepped off the pavement when the first shot was fired, and it fell out of his hand; I did not see him throw up his hands, but rather reached behind as if he was getting another pistol; then he was shot again as he started for the other curb; was shot the third time on his return about the middle of the street, and fell, when Black shot him a fourth time; Black then went toward the jail and delivered himself up; suppose he delivered himself up, as he got so near the jail he could not get away; the first shot was fired on the pavement; second as he was crossing the street; third on the opposite pavement, when McKaig threw his arms behind him and exclaimed, "Oh," and fell on his face; Mr. Black crossed over the street again and fired the fourth shot; I went to work then, and have been in Cumberland ever since.

Henry Hall, for the defense, was the next witness called. He testified as follows: I live about seven miles east of Cumberland, and I was in Cumberland on the morning of the shooting; I knew McKaig and know the prisoner; I was, at the time of the shooting, in Mr. Ogle's harness shop; I heard the reports of the pistol, and went to the door and saw Mr. McKaig fall near the middle of the street, in front of Dr. Smith's office; I saw a pistol picked up after he fell; it was near his right hand; I did not know the person who picked it up, and I know Mr. Turney; it was not him, I am sure; I did not take particular notice of the man who picked it up.

Cross-examined by Mr. WHITNEY, for the prosecution:

The pistol was very close to the body; it had not been removed when the pistol was picked up; the man who picked it up had mixed gray hair; it was not Mr. Turney.

Charles Clark, (a boy of about ten years of age,) was called for the defense, and testified: I live in Cumberland; know Mr. Medoro; I knew Mr. McKaig, but don't know the prisoner; I was in Mr. Medore's store the morning of the shooting, getting measured for a pair of shoes; I looked out of the window and saw Mr. McKaig near Mr. Medore's door, and Mr. Black following him; I saw a pistol fall in the street, but did not see it fall from Mr. McKaig's hand; it fell right in front of Mr. Turney's store, and in the gutter; after the third shot Mr. McKaig fell; Mr. Turney picked up the pistol.

Cross-examined by Mr. WHITNEY, for the prosecution:

I heard only one shot before looking out of the window; I saw McKaig fall; both of them were off the pavement when the pistol fell; I saw only McKaig's left hand; in it he had a cane; the body lay in the middle of the street and the pistol lay about seven feet from it; I did not go out of the store until the shooting was over; the pistol was picked up after the body was taken in, and the body had been picked up before I left the shop; I did not go to the body, and I did not see the pistol lying there while the body was there.

Dr. L. K. Hummelshine, who had been summoned by the prosecution, was called by the defense, and testified: I live in Cumberland; I knew McKaig, and I know the prisoner; I am a dentist, and have lived twenty years in Cumberland; I witnessed a part of the shooting affray on the 17th of last October; after the first fire I saw McKaig retreating from the edge of the curbstone; he went towards the middle of the street; I have no recollection of seeing anything in his hand; I saw something fall; he was near the edge of the gutter when I saw it fall; I could not positively distinguish what it was; it was not a cane; it was a dark object; I saw him cross to the middle of the street, and Mr. Black then fired the second time; McKaig continued to cross, and, near the curbstone, stumbled, and caught hold of a post; he appeared, then, to reel; my impression is, that just before he reached the post, the third shot was fired; he then retraced his steps toward Mr. Black, and when he was near the middle of the street the fourth shot was fired; after the third fire, he put his hand to his back, said "Oh!" and threw up his hands; I was a witness before the grand jury.

Cross-examined by Mr. WHITNEY:

I was standing in front of Ryan's store when I saw the firing; I waited there until the difficulty was over; my impression is that Black had not left the pavement when he fired the second shot.

Lawrence Wilson was next called for the defense and testified: I was in Furgeson's saloon when Black and McKaig had a difficulty; I think it was on Wednesday, the 11th of October, before the shooting, Mr. McKaig came from the billiard saloon and rustled against Black. Black turned and said, "This is two insults you have given me to-day;" McKaig walked out and said nothing; McKaig jostled Black with his elbow; my impression at the time was that it was an invitation to play a game of billiards; the billiard room is a step higher than the bar room and there was room enough to pass without nudging.

Cross-examined by Mr. Whitney without eliciting any new facts.

John Long, a witness for the defense, was called and testified as follows: I live in Cumberland; I knew W. W. McKaig, Jr., and I know Mr. Black, the prisoner; one evening, about two weeks before Mr. Black shot McKaig, I was standing at Shaw's corner, opposite the Baltimore and Ohio Railroad depot, I saw Mr. McKaig coming across the railroad from the direction of his father's house; just as he got to the corner of the depot he stepped behind the depot and placed his right shoulder against the corner of it and peeped out down Baltimore street; this excited my curiosity and I looked down the street in the direction McKaig was looking, and saw Mr. Black coming up toward McKaig; Black came up the street as far as the entrance to the Revere House barber shop and stopped; when Black got nearly up to the Revere House, which adjoins the depot, McKaig drew back behind the building; he had then a revolver in his hand and had it down by his side; Black hesitated a moment at the door of the barber shop, and then turned and went down the street; McKaig followed him down to Furgeson's saloon and I saw them no more.

Cross-examined by Attorney General JONES:

I have been keeping a saloon in Cumberland for the past year; I saw McKaig next to the ticket office standing on the edge of the platform; he looked down Baltimore street toward the bridge; I was standing directly opposite at Mr. Shaw's warehouse; the city lamps had just been lit; I don't think the train had come in yet; there were not many people about; McKaig looked down Baltimore street; I also looked down and saw Black by Mr. Little's jewelry store, coming up; the lights were very brilliant; I had heard of some disturbance between Black's father and McKaig; Black came to Cooper's barber shop and then turned and went down the street as far as Furgeson's saloon; McKaig followed; he walked fast, but had not overtaken him when I quit looking; I saw a pistol in McKaigs hand at the Revere House; he held it behind him; the light of the ticket office shone through the window; I did not immediately notify Black that McKaig had a pistol looking for him; I did not know what McKaig would do, as he was a desperate man and always went armed; I saw him often in the barber shop, for three or four weeks before the tragedy, with a pistol; on

Sunday evening, the day before McKaig was killed, I saw Harry Black and asked him when he had seen McKaig; he said "what is that to you;" I told him nothing, but I had seen McKaig watching for him with a revolver, and I thought it my duty to tell him; Black told me to mind my own business, and I turned and left him, and did not see him again till after the shooting.

Henry Shriver, Jr., was the next witness called for the defence. He testified that Black called at his store on his way to town between half past seven and eight o'clock, on the morning of the shooting. His testimony was unimportant and was merely introduced for the purpose of showing that Black, in going down town by the nearest way, would have to pass McKaig's foundry. This was done to do away with the testimony of Mr. Orrick for the prosecution, who testified that he saw Black pass McKaig's foundry on the morning of the shooting before it occurred.

Asa Willison, for the defense, testified: I have lived in Cumberland thirty years. I am not acquainted with the prisoner, but I have always heard him spoken of as a remarkably quiet and peaceable man; his good character was the subject of general remark.

Mr. Whitney objected to the witness being asked if the prisoner was industrious and sober, as it was not proper in an examination in which it was sought to prove his character for peace and quietness.

Fred. J. Nelson, Esq., replied for the defense, and insisted that it was proper, under the circumstances of the case, to introduce all the testimony necessary to establish fully the whole character of the prisoner as a man and a citizen.

The State's Attorney, Francis Brengle, Esq., replied that the question of character was well understood, and it would do the prisoner no injustice to observe strictly the established rules of law.

The Court stated that the rule of law was well settled that only questions as to peace and quietness were admissible.

The witness continuing: My personal acquaintance with the prisoner is slight, but I have heard him spoken of as a remarkably quiet, peaceable, amiable and honorable young man.

Alfred Spates, (State Senator,) testified: I have heard the character of the prisoner discussed; his reputation is good for peace, quietness, and gentlemanly conduct; I have known him for twenty years.

Mr. Voorhees wished to know of the Court if, under its rules, it was not admissible to introduce testimony to show what confidence had been reposed in the prisoner by those who knew him?

Attorney General Jones objected to the introduction of such testimony, as it did not constitute legal testimony in such a trial.

Mr. Syester replied at some length, urging the importance and propriety of testimony to establish in the minds of the jury what sort of a man stood before them for their verdict.

Attorney General Jones read authorities upon the subject, and argued further the inadmissibility of such testimony.

The Court thought that the inquiry into general character could

only be properly directed to the point of character involved, and not to other special points or traits of character.

The witness continued: The general character of the prisoner is very good for amiability, and even gentleness of disposition.

By Mr. NELSON:

From your knowledge of his character and reputation, do you believe he would be guilty of wilful murder?

The Court warned the witness not to answer, and said, it was for the jury to draw inferences, and not to have them from the mouths of witnesses.

Mr. Nelson replied, urging the right of the defense to enlighten the jury by such testimony.

Mr. Whitney, for the prosecution, replied, at considerable length, earnestly urging the impropriety of giving to the jury testimony of such an improper character.

The Court, through Chief Justice Maulsby, said it was legal testimony to prove good character for quietness, peace, and amiability, and gave its opinion at some length that the opinion formed by the witness from knowledge of the general character and reputation of the prisoner was clearly inadmissible.

The witness continued: I knew McKaig; he was a handsome, stout, well-built gentleman, and was much stouter than the prisoner; he was about six feet in height, and weighed, I think, about 170 pounds.

By Mr. WHITNEY:

I have heard the character of Black discussed before and since the shooting; it was the subject of much favorable comment.

Captain Powers testified: My home is in Baltimore county, but I am now mining in Piedmont, Virginia; I have known the prisoner for eighteen months; his character cannot be excelled; his general character is very good, I never heard it questioned; the position of a superintendent of a mine is one peculiarly calculated to try the temper and amiability of a man.

John L. Browning testified: I live in Alleghany county, fifty miles above Cumberland, and I am frequently in Cumberland, as I am a county commissioner; I am not acquainted with the prisoner, but have always heard him spoken of as a high-minded, honorable young man.

A large number of other witnesses were called, all of whom testified to the unusual good character of the prisoner. It is quite a remarkable fact that many witnesses put upon the stand to testify as to Black's character were witnesses summoned for the prosecution.

At 3 p. m. the court adjourned until Saturday morning at 9 o'clock.

FIFTH DAY.

Continuation of Evidence for the Defense—Interesting Debate upon the Admissibility of Evidence.

On Saturday morning, April 13th, the fifth day's proceedings in this case, was begun, as usual, at 9 o'clock.

All the judges were upon the bench, and the same intense interest was manifested by the community in the proceedings as heretofore. The prisoner came into court promptly, and looked exceedingly bright and cheerful. Immediately after the opening of the court, the evidence for the defense was continued.

James O'Neil was the first witness called. He testified: I reside at the Franklin mines, and am a miner; I know the prisoner; his general reputation for peace and quiet is very good; he is in every respect a gentleman; his reputation for even temper is very good, and it was often tried at the mines when he was superintendent there

Hon. Horace Resley, clerk of the circuit court of Alleghany county, testified: I have known the prisoner twenty years; his general character has always been exceedingly good; I saw him, a few minutes before 8 o'clock of the morning of the shooting, coming into the court-house yard; he wore a light overcoat. The coat was shown the witness, and he said Black wore that coat, or a similar one, and that it was usual for overcoats of that description to be worn at that season in Cumberland.

Cross-examined by Mr. WHITNEY:

Mr. Black attended court in a civil suit the week before the shooting.

The witness was asked if he remembered the day of that week upon which the father of the prisoner had been indicted for an assault upon Colonel McKaig with intent to kill.

Objection was made by the defense, and considerable argument followed between Messrs. Whitney, Syester, and Brengle on the legal propriety of the question. The defense finally withdrew objection.

The witness continued: The prisoner was in court on the 12th of last October on business for the Franklin Mining Company, and that business was settled the next day; he was not in the court-house at any time during the remainder of that week, as far as the witness recollected; his father, H. D. Black, was presented for shooting Colonel McKaig, and recognized on the 15th of last October.

Elijah Fuller testified: I am register of wills at Cumberland, and I know the prisoner; his general reputation for peace and quietness is very good; I never saw anything wrong about him; I saw him at the court-house in Cumberland after the shooting of Colonel McKaig.

The witness was then asked what was the purpose of the prisoner in coming to the court-house, as far as he knew. The question was

objected to by Mr. Whitney, and, after some desultory discussion, Mr. Voorhees stated that the defense would waive the question, with the right to recall the witness upon that point.

George Layman, sheriff of Alleghany county, testified: The general reputation of the prisoner for peace and quietness is good.

By Mr. NELSON:

Q. Where did you arrest Mr. Black?

Objection was made by Mr. Whitney, who inquired for what purpose it was asked.

Mr. Nelson replied that it was to give to the jury all the circumstances surrounding the prisoner.

After considerable discussion between Mr. Nelson and Mr. Whitney on the legal right and propriety of the question, the Court stated that, in its opinion, the fact of the arrest of the prisoner was not evidence of guilt, and, after expressing, at some length, its further opinion upon the admissibility of such evidence, refused to allow the question to be answered.

The witness continued: I first saw the prisoner, after the shooting, coming around the court-house corner, and going towards the jail; Mr. Schafer, my deputy, was with him. The witness was shown a dark drab-colored overcoat, and asked if it was the one the prisoner wore on that occasion; he replied that, to the best of his recollection, it was, but he could not be positive.

[A large number of other witnesses, gentlemen of high standing in and about Cumberland, were called and interrogated as to the character of Black, and all testified in the most flattering manner to his amiable disposition and gentlemanly qualifications.]

John M. Resley was the next witness called for defense. He, like all the rest of the witnesses interrogated as to Black's character, testified that it was remarkable for quietness and gentlemanly conduct. He had known him twenty years; they had been playmates together.

Mr. Syester then handed witness a letter, and asked him to indentify the hand writing.

Mr. Whitney, for the prosecution, objected to the question being answered until the paper had been shown to the Court, that they might see its condition and determine whether or not it would be admissible. He denied that it was a genuine letter, or ever written by McKaig, and called the attention of the Court to the fact that it was originally written in pencil and afterward inked over, thereby destroying its identity and the individuality of the hand-writing. The paper was handed to the Court, and a moment thereafter, while the judges were examining the letter, Mr. Whitney said that, before objecting further to the introduction of the paper, he would submit the following interrogatories to the defense for answers:

First. What is the object of the testimony, and what fact is it offered to establish, or that it tends to establish?

Second. The ground upon which the defense claim the right to establish such a fact?

Mr. Voorhees, for the defense, submitted the following, in answer to the interrogatories of Mr. Whitney:

The counsel for the prisoner offer to prove, by competent evidence, that his sister was seduced by the deceased, and that she bore a child as the result, and that such facts were made known to the prisoner prior to the homicide, and had been the subject of intense mental agitation on the part of the prisoner during the night immediately preceding the collision between the prisoner and the deceased, in which the latter lost his life, for the purposes following:

First: To show the condition of the prisoner's mind at the time of the collision and homicide.

Second. To enable the jury to determine from such provocation the grade of homicide committed by the prisoner.

Third. To explain the expressions shown by the prosecution to have been used by the prisoner at the time of the collision and the killing.

Fourth. This evidence may be admissible for other purposes at subsequent stages of this trial, but the Court is only now asked to rule its admissibility for the foregoing purposes.

Mr. Whitney, for the prosecution, in rising to argue against the admissibility of the letter and the foregoing propositions of the defense, said that, upon reflection, he considered that after the consumption of more than two days of the time of the Court, since the opening statement in behalf of the prisoner had been submitted, they were now entering upon the very threshold of the theory of defense, which was foreshadowed in the opening statement of the prisoner's counsel. Every case had its theory, and upon that ground counsel are allowed to make opening statements to the jury. These statements are to contain the facts expected to be proved, and the law applicable to those facts. They are made upon the responsibility of counsel, sworn officers of the court, and amenable to that tribunal for the correctness of their statements, both as to law and fact. The theory of the defense assumed in the opening statement was the seduction by McKaig of the prisoner's sister, and the fact that he was the father of her child. If these questions of fact could be fully gone into, upon the one side as well as the other, no objection would be made on the part of the prosecution to try those issues of fact before the jury, and if the evidence now offered tended to establish their truth, he would make no objection, provided the doors were to be opened wide to both sides to investigate the truth or falsity of the facts alleged; but, understanding the rule of the law to be that where counsel allowed illegal testimony to be introduced without objection, they would not be entitled to offer evidence in rebuttal, it became, therefore, the duty of the prosecution to place themselves right before the court and jury, and object to the testimony offered, unless upon the distinct understanding that they should have the right to show the allegation of seduction to be utterly and entirely false.

Mr. Whitney then argued at considerable length in relation to the effect of the evidence sought to be offered, and quoted largely from authorities to substantiate the position assumed by the prosecution in relation to the evidence tending to prove seduction.

He then proceeded to state the legal propositions that he considered laid at the foundation of the entire argument: First, that no provocation known to the law justified a homicide; second, provocation could only be offered to reduce the homicide from a higher to a lower grade;

third, that what constituted provocation was a question for the Court; and fifth, the existence of that provocation in any particular case was a question of fact for the jury to determine.

Having fully elaborated the above points, he then proceeded to make their application. Referring to the opening statement of Mr. Syester, he called the attention of the court to the declaration made by him (Mr. S.) to the jury, that "this was either a case of murder in the first degree, or it was nothing." This was the position assumed by the defense, and therefore excluded all question or idea of provocation, which alone could be introduced to reduce the grade of a crime actually committed. All efforts, therefore, to introduce the evidence upon the ground of provocation must fail, and it could be urged as admissible only upon the broad ground of justification.

He then proceeded to argue the proposition advanced by the defense that it was admissible for the purpose of showing the state of feeling under which Black was laboring at the time of committing the homicide. He called the attention of the Court to the fact that no defense of insanity or frenzy had been set up in this case, and then proceeded to illustrate how, in certain cases, where insanity was set up as a defense, evidence of such a character might be introduced. In those cases it was admitted upon the theory that insanity consisted of different kinds, each kind having different degrees, and each kind and degree accompanied by its particular development; and in a case where evidence was introduced to establish one kind of insanity, accompanied by its peculiar developments, it was then admissible for the purpose of showing that a sufficient cause existed to produce the peculiar kind and developments of the insanity sought to be established.

He fully reviewed and commented upon the cases of Sickles and Mary Harris, and contended that in each of those cases testimony of this kind had been excluded. He then proceeded to argue the proposition that, even admitting evidence of that kind to be admissible, there was nothing in the letter offered tending in the least degree to establish the charge of adultery. He characterized it as an evident attempt to shirk the broad question of seduction, which the State offered themselves to disprove. He then pointed out the terrible consequences to society of the announcement of any such principle by a tribunal of justice—that it would not only engraft upon our laws adultery and seduction as a full justification for the taking of human life by any person, through malice or revenge, and then come into a court of justice and set up as his justification that he had been informed that either of these offenses had been committed. Such a doctrine would place the life of every man in the hands of the most common harlot, break down all law, subvert government, and overthrow society. Mr. Whitney then proceeded to illustrate the above positions by calling attention to the particular facts in this case. That, meeting McKaig upon the morning in question, he shoots him down in cold blood, and after his lips have been sealed in death and his soul ushered into eternity, he then, for the first time, standing by the dead body of his victim, accuses him of having been the seducer of his sister, and now claims, as a justification of his bloody deed, that he had been informed that such was the fact, without giving an opportunity to the unfortunate deceased to deny the fact, and to establish his innocence. He contended that this was not only making every man judge, jury, and

executioner, but was giving to him the power to execute before he had established the guilt of the party. Mr. Whitney spoke for an hour and a quarter, and his remarks, which were forcibly and eloquently put, were listened to throughout with close attention.

Mr. Voorhees, for the defense, in reply to Mr, Whitney, said :

I shall not detain the court much longer on the question before it. It is always pleasant to listen to a counsel so able and ingenious as has just taken his seat, but the arguments used are not new or novel. They have been uttered over the graves of adulterers and violators of homes for the past hundred years. They are always heard in cases similar to the one now being tried. In reference to the wail that is now being made over the dead body of McKaig, that he was shot down without being charged with the act and an opportunity given to deny it, we will prove, by his own admission, that there was no necessity to charge it. McKaig had admitted that he wrote the letter offered as testimony, which, upon its face, bears the evidence of the criminal intimacy between himself and her to whom it was addressed. The letter, it appears, was delivered to Miss Black while she was on a visit to a friend's house; that she tore it in two pieces and threw it into the grate, and supposed it was destroyed, but where it was afterwards found. All these facts, in confirmation of the authorship, were known to the prisoner, and contributed to excite that frenzied condition of mind under which he was laboring at the time of his meeting with McKaig.

The common law, as written in the books, has been modified by the unwritten law pronounced in the verdict of juries, which throws its protection over the sanctity of homes, and shields them from dishonor. I have not known a case for two hundred years where a father, a brother, or husband has taken the law in his own hands and avenged the dishonor of a daughter, sister, or wife, and where the motive was pure and free from any sordid views, in which a court or jury has found a conviction.

I challenge the production of a single adjudicated case, in the whole range of civilized jurisprudence, where any distinction has been made in the rulings of courts or the verdicts of juries between the case of a husband tried for killing the seducer of his wife, a father for killing the seducer of his daughter, and a brother for slaying one who, as in this case, had ruined his sister. The reason for this uniformity in all such cases consists in the fact that a home is a divine institution; that the purity of the domestic circle cannot be invaded and destroyed without the destruction of civilized society, and therefore, whoever defends it violates no law, either human or divine.

In the onward progress of the sciences, I regret that the science of of the law, born in the ruder ages of our race, has not been improved and adapted to the present higher developments of the age and society, and to the great social problems of the day. A great English judge has said that "the dishonor of a home by the seduction of the wife was a provocation to the husband greater than human nature can bear"—and courts can take cognizance of human nature. All that men have to do is to consult their own hearts, their own feelings, their own instincts, and their own sense of honor, and they, too, will decide that seduction is a crime which wrings the heart of man beyond what human nature can bear.

The Sickles case was one of the most ably tried cases of the kind in the land. It was tried by the ablest counsel on both sides, who exhausted every legal aspect of the case, and, like this, the prosecution had wealth and power behind it. In that case the precise question which is presented in this case was decided in favor of the defense. The confession of the wife of the defendant was ruled out, because she was his wife and it exonerated her husband, but the expression of the prisoner at the time of the firing, that "his bed had been dishonored," &c., was admitted, as in this case. So completely did the court allow the proof of adultery to be admitted, that the prosecution afterwards offered to admit the confession of the wife, because, they said, it could not further affect the case.

We are obliged to refer to the rulings and practice in the most important and ably tried cases at *nisi prius*, because cases of this kind never reach the higher courts of appeal. There are never any convictions under which the prisoner can carry exceptions to the rulings of the courts below to the higher courts for review and adjudication. There is one principle now established in connection with the subject, that it is not necessary for a husband to witness his own shame—to see it with his own eyes—in order to justify him in becoming his own avenger; and the same rule applies to a father and son as to a husband.

In this case McKaig was not content with destroying the sister of the prisoner, but he sought by browbeating and menacing the boy, to pursue and kill him if possible. Such conduct was more than the judges which grace this bench, more than the counsel for the prosecution, more than those around him, more than the jury in the box, more than human nature could bear. Imagine the meeting between the prisoner and the deceased on that fatal morning; one was a man in years, stalwart and powerful in size, the other comparatively a boy in age and physical stature, but when McKaig approached him with his hand in deadly preparation upon his pistol, crossing the street to confront him, the image of a ruined sister, defiled and trampled into the very mire by this man, connected itself with thoughts of his own personal safety and personal honor, and he would have been more or less than human if the very whirl of delirium and the rage of madness had not inspired his heart and brain. Under such circumstances, no wonder that the powerful man fell in the encounter with this boy. There is always a providence hovering over such a scene. The prisoner was the victim of accumulated and unbearable wrongs. The case of Mary Harris had been referred to by the opposite counsel. It illustrated this point. She had never handled or used a pistol, yet her aim seemed guided by some miraculous agency.

In the present case the proof was shown that McKaig was a practiced and most skillful shot. (If he had been clothed with innocence and his quarrel had been just, the chances would have been ninety in a hundred in his favor.) It is said he was a brave man. But conscience palsies the right arm of the seducer and the adulterer whenever and wherever he confronts the injured and outraged husband, father or son.

Attorney General Jones then replied to Mr. Voorhees, in a lengthy argument, contending that the evidence was clearly inadmissible. At its conclusion, the court adjourned until Monday morning, at 9 o'clock, reserving its opinion on the point raised until that time.

SIXTH DAY.

Further Proof as to Good Character—Opinion of the Court in relation to the Evidence of Seduction—That Letter—Interesting Evidence for the Defense.

Monday, April 17th, the court convened at precisely 9 o'clock A. M., for the sixth day's proceedings in the case.

The court-room was, at an early hour, crowded with an anxious audience, who, after listening to the able and eloquent arguments of counsel on Saturday, were anxious to hear what would be the ruling of the Court upon the question raised.

As soon as the court was called, Chief Justice Maulsby said, in reference to the point raised by the prosecution on Saturday, that it was the opinion of the Court that it is not competent to prove the fact of seduction as a fact tending to the issue in this cause. It is competent for the defense to offer proof of the condition of the mind of the prisoner at the time of the homicide. The question is, what effect was made upon the mind of the prisoner by the communications made to him by words, or in any other manner, in relation to the alleged seduction of his sister?

After the delivery of the opinion, Mr. Voorhees, for the defense, said that there were present two distinguished gentlemen, who had come here of their own volition, to testify in behalf of the prisoner, and he desired to put them upon the stand, that they might return to Washington by the next train.

The counsel for the prosecution consented, and *Hon. H. G. Davis*, of West Virginia, was called.

Examined by Mr. VOORHEES:

Mr. Davis, state where you reside, your position at present, and whether you know H. C. Black?

A. I reside in Piedmont, West Virginia; am a United States Senator from West Virginia; I have known Crawford Black for the past eighteen months or two years—from the time he was superintendent of the Franklin coal mines; I knew him in Piedmont.

Mr. VOORHEES. State his character in that community for peace and quietness.

A. I have not known him intimately, but from what I know, his character was beyond question; I had almost daily intercourse with him in a business way.

Mr. VOORHEES. State whether his position as a superintendent was calculated to test him?

A. I think it was.

Hon. Jackson L. Orr called:

I reside in the town of Montana, Boone county, Iowa, and am a member of the United States House of Representatives from that State; I knew Crawford Black, the prisoner, at my home in Iowa, from the latter part of 1867 until early in the year 1869.

Q. What was his business there?

A. He was clerking in a store which belonged to a firm of which I was a member.

Q. Did you know his general character, and if so, what was it?

A. I became acquainted with his general character while there, and it was very good; I never heard anything alleged against it.

Cross-examined by Mr. WHITNEY:

Q. Do you mean by his general good character that you never heard anything alleged against it?

A. I do.

Mr. Whitney said that he would like to have the reasons for the opinion delivered this morning in full; that, as no doubt this case would contribute much to settle the law in Maryland, which is to govern in cases of this character, it was necessary that they should have it, to see what bearing it might have on evidence to be offered.

Chief Justice Maulsby said the whole question had not been clearly presented to the Court, because coupled with conditions. The attorney general, in his argument on Saturday, said that the counsel for the State only wanted a decision on the piece of evidence offered, and that in the opinion delivered the Court has attempted to confine itself strictly to that, because of the great danger of being misapprehended, by either the jury or other persons, they did not amplify, but that at request of counsel they would present their opinion more fully, confining themselves, however, within the narrowest possible limit. He then proceeded to deliver the opinion of the Court as follows:

"The defense offered to read in evidence a paper which, it has offered evidence to prove, is in the handwriting of the party killed, and which it announces that it will prove to have been addressed by the deceased to the sister of the traverser, and to have been received by her, and afterwards, and prior to the killing, to have been communicated to the prisoner. And being called on by the State to state the object of the testimony, and what fact it is offered to establish, or tends to prove, replies, that it offers to prove by competent evidence that the sister of the prisoner was seduced by the deceased, and that she bore a child as the result, and that such facts were made known to prisoner prior to the homicide, and had been the subject of intense mental agitation on the part of the prisoner during the night immediately preceding the collision between the prisoner and the deceased, in which the latter lost his life, for the purposes of showing the condition of the prisoner's mind at the time of the collision and homicide, and of showing the grade of the homicide, and by way of explaining expressions used by the prisoner at the time of the homicide, and admitted in evidence by the Court on the cross-examination of the State's witnesses.

"The State objects to the admissibility of the proof offered.

"The court is of opinion that it is not competent to prove in this case the fact of the seduction of the sister of the prisoner by the deceased. It is competent to offer evidence tending to prove the condition of the mind of the prisoner on the occasion of the homicide, either by proof of communications made to him on the subject of the seduction of his sister by the deceased, or any facts and circumstances coming to his knowledge touching that subject; that the paper offered is admissible, coupled with the proof stated, for any and all the purposes before stated by the Court."

After the delivery of this opinion Mr. Whitney turned to the counsel for the defense and offered to go into a full investigation of the alleged seduction of the prisoner's sister and the paternity of the child, stating that although McKaig never knew Myra Black until after the war, that the State was prepared to prove both, by particular acts and general reputation, that prior to the war she was not a virtuous woman, and that during and subsequent thereto she was a person of known loose character.

Mr. Voorhees, for the defense, objected to the line of wanton remarks on the part of the prosecution, when there was nothing before the Court. The whole subject of seduction had, he said, been ruled out by the Court, and was not, therefore, a question at issue, and they were not willing to accept the offer of the prosecution to make it a question.

Mr. Whitney then said he desired to make an application to the Court. The defense in its opening statement to the jury alleged the fact of seduction, the result of which was the birth of a child. This opening statement having gone before the jury, which, under the ruling of the Court, cannot be rebutted, he suggested to the Court that so much of it as the Court had stated was not pertinent to the issue should be withdrawn, and asked the Court to instruct the jury that it formed no part of the case.

Chief Justice Maulsby said that the Court did not feel called upon to give any instructions to the jury at this time affecting the whole case; that it was beyond the province of the Court to give instructions to the jury or rule upon any matters beyond the legal questions presented to it.

Lloyd Lowndes, Esq., was next called for the defense, and testified that he is a lawyer in Cumberland; married the cousin of the prisoner; never mentioned to prisoner his sister's name after she left Cumberland until the Sunday before the shooting; the prisoner came to his house that Sunday morning; witness then told him about a letter written by Colonel McKaig to his sister; he had not seen the letter himself; only heard of it; told the prisoner that his sister would have to come on to attend the trial of her father; told him that W. W. McKaig was the seducer of his sister; he seemed greatly agitated and distressed, and left the house and went to Mr. Roman's residence; witness also went up there a few moments afterwards; and there, in his presence, the prisoner read that letter, and soon after left the house next time witness saw him was in his mother's house that same afternoon; the prisoner was in the room and overheard the conversation held by him with his mother; witness asked his mother where her daughter was, and after some hesitation the mother said she could not tell; he said he must know her address, that he was preparing a defense in her father's case, and that she must return home to attend his trial; she then told him that she had a child four months old, and gave its name and the date of its birth; the prisoner was nervous, excited, and restless; after being there sometime, the prisoner went into the next room; he heard him walking up and down the floor excitedly; witness left and walked up town; the prisoner went with him, and left him at witness's gate; where the prisoner went he did not know; did not see him again until he saw him going toward the jail on Monday.

Mr. Syester, for the defense, then handed to the witness the following letter, and asked him to state to the jury whether or not it was the one communicated to the prisoner on the day before the shooting:

"JUNE 20, 1866.

"MY OWN DEAREST: I will make an attempt to answer your note just received, but I fear I shall fail before I get through. Even if I do, I shall consider the time well spent. I unfortunately took a drink the other day, and you know how I am when I once get a taste. I cannot stop until I get too much, and that is the reason I did not see you when you were out this morning. I was up street playing cards and drinking, and I did not come out until 3 o'clock in the evening. I had a very good time, but ten to one would sooner have been with my little pet. Oh! you hard-hearted little thing! how dare you tell me that I am losing all love for you? It is not that I love you the less that I am so suspicious of you, but that I love you the more! Now, there's no use for you trying to make me believe that you are blind, because I know you well enough to know that you see already too well, and you knew when you put that to paper—that I did not want to see you—that you were telling what you know to be a lie. I swear (no, I won't swear either,) because you say that is not proper, and you know I try to do everything that you like, but I will be dogged, if you let this opportunity slip, and don't spend the night with me while you are up town, I shall never speak to you again, because it will be your fault alone, as there is nothing in this world to prevent your coming. All you will have to do is to bring a couple of thick veils, and not loop up your dress, and you can go away the back way in the morning, and nobody will be the wiser. Now, my dear, I should like to see you before the place is closed, so that we can understand each other, and I will have to leave that for you to arrange. And so, good-bye, my dear, and think of me as none other than yours.

"FOREVER.

"If you read this, you will do more than I can."

Mr. Whitney objected to this letter being read to the jury for the reason that the defense had totally failed to prove its genuineness. That being written in pencil and afterwards inked over, no one could pretend to say in whose handwriting it was, and that there was not a particle of proof in the case that McKaig ever wrote or sent it, or that Myra Black ever received it.

Mr. Voorhees said it was immaterial whether it was a genuine letter or not, provided it was shown to be a communication made to the prisoner.

The Court allowed the letter to be read.

Witness resumed: It is the same letter shown to the prisoner and read by him on the Sunday referred to.

Witness then read the letter to the jury.

Cross-examined by Mr. WHITNEY, for the prosecution.

Mr. WHITNEY. Is there any name signed to that letter?

A. There is no signature to the letter, except "Forever;" there is no name signed to it; witness said that he and the prisoner were talking in reference to preparing the defense of his father on Sunday when he called to see him; witness told him that his information and

opinion was that McKaig was the seducer of his sister; he stated it upon the ground of the letter and upon what the prisoner's father had told him, and what he understood from the family and Mr. Black's friends. Witness gave Black the names of certain parties in regard to this letter, William W. McKaig and Judge Pearce; Black came to his house between 9 and 10 o'clock; did not know that the prisoner had made a threat to shoot McKaig; went to Roman's house about 12 o'clock; found the prisoner and Mrs. Roman there; don't think Mr. Roman was at home; saw the prisoner on Friday, the day before the father was presented; did not hear the prisoner say anything about it; witness first heard the contents of the letter on Friday or Saturday morning before the shooting; saw it on Sunday; read it after Black had read it; Black did not say anything about the letter after he read it, but seemed much excited; told him the letter was in Mr. Roman's possession; how it came there witness does not know; knew McKaig for about three years; do not know if McKaig was a man of good education, or had passed through college, only from hearsay; when witness first saw the prisoner that day he had not read the letter, only heard of it.

John M. Resley, for the defense, called.

Examined by Mr. NELSON.

Q. Did you ever have a conversation with W. W. McKaig, Jr., about a letter he had written to Miss Myra Black?

WITNESS. I did.

Mr. NELSON. State what that conversation was?

Witness stated that McKaig told him that he wrote the letter.

Mr. WHITNEY. I object to any declarations of the deceased.

The COURT. By this evidence it is sought to identify the letter, not that it was communicated to the prisoner, but to couple the particular paper already offered in evidence with the deceased.

Mr. WHITNEY. Do we understand that it is immaterial whether the letter is genuine or not?

The Court, without replying to the interrogatory, said the evidence was admissible under different theories, and that the Court only determined it so in reference to its legal admissibility to prove the issues in this cause.

Mr. VOORHEES. We withdraw the question for the present.

William E. Henshaw was next called for the defense and testified: I live at the Franklin mines, and know the prisoner, he boards with me. I am not positive whether he reached the mines on his return from Cumberland on the Friday night or Saturday morning preceeding the shooting; I remember a conversation I had with the prisoner, at the Franklin mines, on the Saturday evening before the shooting, about 6 or half-past 6 on the afternoon of that day; Mr. Black was paying off that day and was very busy, and when I had an opportunity to speak to him I availed myself of it; I went into his room when he came into supper and asked him if the grand jury had indicted his father; he said they had not; I told him I was glad of it; he asked me why I thought he would be indicted; I told him A. Beall McKaig had told me it would be done; he said he had not been able to learn the truth of what had happened at the fair ground, as his father had been in no condition of mind for him to ask about it; I told him

also that I had heard that at the fair grounds Colonel McKaig had denounced his sister as a strumpet; he said "My God, is it possible?" changed color, and seemed much excited; I then left him, as the subject seemed very painful to him that was the only time I ever mentioned it to him; I do not know what time he left the mines that night for Cumberland; I think the trains were running about 9 o'clock. he wore light pants and my coat, which has been shown here as his; I saw it in the jail the night of the day the shooting took place. Mr. Black was in the habit of purchasing for the miners grain at Mr. W. L. Shaw's, and most of the oil at Mr. S. C. Shriver's; Black must have brought to Cumberland about $2,000; it was put in an envelope and made quite a large package.

Cross-examined by Mr. WHITNEY:

He had, I suppose, about $2,000 after paying off the hands; he sent in a sheet to the paymaster's department, rendering in it an account of his disbursements; this was on Saturday; he knew on Saturday that his sister was in difficulty—which was October the 15th; I also told him that I had heard of something that had occurred on the fair grounds; Black replied that he had not ascertained the facts of the affair at the fair grounds; I had heard that McCaig had threatened to shoot Harry's father.

Mr. NELSON. Have you seen anything in the newspapers about the difficulty between McKaig and the prisoner's father?

WITNESS. I do recollect of seeing something in the papers; I take the Cumberland papers, but destroyed them to keep them from Harry's notice.

The next witness called for the defense was Mrs. Black, the mother of the prisoner. She approached the witness stand leaning on the arm of her husband, Harrison D. Black, and every eye in the crowded assemblage followed her. With a trembling step she mounted the stand, and most of the jurors turned and faced her. She was evidently feeble and much excited. Her husband stood by her as she gave her testimony. A seat was given her, and as she was about to give her testimony she raised her veil, revealing to the audience a countenance which indicated her the possessor of intelligence and womanly attributes far above the ordinary strata of feminine humanity; and, although the seal of intense mental suffering had left its heavy impress upon her face, it had not obscured in it the traces of fine personal appearance ere those sorrows came. Her face is regular in its features, and prepossessing for a lady of her age, and she has transmitted to her son in a remarkable degree much of her personnel. She gave her testimony in a clear, distinct manner, except when her feelings overcame her. At these times she placed her fan to her face, concealing it from the gaze of the crowd, bowed her head, and seemed deeply affected. The prisoner was greatly moved during the time she was testifying, and, leaning over, buried his face in his hands, and wept bitterly. The most respectful silence was observed while Mrs. Black was upon the stand, and the sympathies of all were moved at the exhibitions she gave of deep and earnest feeling.

Mr. Syester, for the defense, asked her if she was the mother of the prisoner. In a clear voice, a little tremulous, she said, "Yes, sir; he is my only son."

By Mr. SYESTER:

Can you tell the jury what time he came home on Saturday night before Colonel McKaig was killed?—A. He reachrd home about 11 o'clock that night.

By Mr. SYESTER:

State, if you please, what happened the next day?

A. On Sunday morning he went up town as usual, after getting his breakfast; he always goes up on Sunday, when at home, to see his aunt; I knew what had been told him; I knew he had been told all. [Here Mrs. Black burst into tears.] But I never said a word to him about it; we never talked about the matter at home; we could not talk about it. [Again Mrs. Black appeared deeply moved.] On Sunday evening Harry came home; I was sick in bed that day; he was up stairs in my room, lying across the foot of my bed; Mr. Lowndes came into the house and sent up word that he desired to see me; I sent him word that I was sick and could not see him; he replied that he must see me; he then came up to my room, and, after the usual salutation, asked me where Myra, my daughter, was, and said she must come home; no one knew where Myra was but me; even her father did not know; I told Mr. Lowndes that she could not come home; he said they were preparing a defense for Mr. Black, and she would have to come as a witness; I told him she must not come home, that I could not have my child brought upon the witness stand in such a case as this, that I was willing to risk my life and liberty for her sake, and her father was willing to do the same. [Mrs. B.'s feelings nearly overcame her at this moment, and she was given some restoratives to support her.] She then continued: Mr. Lowndes asked me if she was not able to come home; I told him she was in good health; I then told him, for the first time that I had ever told any one, that Myra had given birth to a child and that it was then four months old; when I told him this my son fell back on the bed and said nothing; this was the first time I had ever told him his sister was ruined. Crawford, after a moment, got up, went into the hall and walked up and down, as Mr. Lowndes said; when Mr. Lowndes went away Crawford went up town with him; he came back in the evening about 6 or 7 o'clock; later in the evening he went to bed; he sleeps in a room adjoining mine, and there is a communicating door between; just before he went to bed he asked me if I felt better, I told him not much; he is a very kind and loving son, and never likes to give me trouble, (she again burst into tears;) I heard him after he retired, up and down all night; I do not think he slept; I could not, and I know he did not; toward morning—it was almost daylight—he came into my room, threw himself upon the foot of my bed, and asked me if I felt better; I told him "yes;" he then went back into his room, and I knew that he had fallen asleep; I did not sleep all that night; on the evening before, when my son came home, I said, "Crawford, will you return to the mines in the morning;" he said "yes." In the morning I got up and went down stairs quite early; I knew that the train for the mines left at 7 o'clock, but I knew that Crawford had not slept any, and I could not bear to disturb him; about 7 o'clock he dressed himself and came down stairs, with his hat on; he asked me what time it was; I told him nearly 7 o'clock, and that it was too late to go to

the mines that morning; he said it did not make much difference, as he had some bills yet to pay that he had not paid on Saturday, but he asked me why I did not call him; I told him I did not like to disturb him, as he had been so restless the night before; I told him to come to his breakfast; he said he did not want anything to eat; I begged him to eat something; he said he could not eat; I asked him to take a cup of coffee; he sat down beside me at the table with his hat on, took a little coffee and then said again he could not eat; he went up stairs and got his overcoat, and then came down; he told me it was Mr. Henshaw's overcoat, he wore the overcoat because he had not yet changed his summer clothing; he then had on light pants; when he started down the street, I went with him to the lower portico; I always went to the door (here she evinced great emotion;) I was so lonely and desolate; I had lost one by this terrible affair and perhaps another would be taken from me; I could not bear to see him leave me (again she shed tears and was greatly agitated;) I was afraid to see him go; I always sat and watched him as he went down the street; it was 20 minutes or half-past 7 o'clock when he went; I went down to the tree where I sat to watch him, and looked after him as he went away; I had never before this told him of the ruin of his sister by Mr. William McKaig; I was afraid to tell him; I had heard that General McKaig had said he would loose three nephews in this affair; when he went up town he always went up Centre street, the other way being almost impassable.

Mrs. Black was not submitted to a cross-examination.

Mr. Syester said that the defense would now rests it case.

Mr. Whitney said that they were surprised at this announcement, and would take a moment to consult. After a consultation Mr. Whitney said they would now call rebutting testimony.

Lawrence Dickinson, for the prosecution, was called, and testified: I reside in Cumberland; it is my native place; have lived there from birth, with the exception of a few years; I knew Myra Black slightly

By Mr. WHITNEY:

Did you know the general reputation of Myra Black before, during, and after the war?

Mr. VOORHEES. I object, and am astonished at this attempt to introduce evidence so clearly inadmissible. There can be but one purpose, and that is to——

Mr. WHITNEY. I am able to state to the Court for what purpose I seek to introduce the evidence.

Mr. VOORHEES. The purpose is perfectly apparent in the absurdity of the proposition.

Mr. Whitney replied that he had asked the question under a sense of his responsibility as a sworn officer of the Court, and was responsible to it alone for his action. The defense having offered evidence of communications made to the prisoner, which tended to show the condition of his mind at the time of the homicide, he claimed it competent for the State to show that the reputation of Miss Black was of such a bad character and so generally known in the community of which the prisoner was a member, that it must have come to his ears, and therefore such communications could not have operated upon his mind as claimed by the defense.

The Court, through Chief Justice Maulsby, said it was competent for the State to reply to proof as to the condition of the prisoner's mind by any proof going to the prisoner's mind on the same subject. The fact sought to be proved could have no legal connection with the facts in this issue, and the Court is of the opinion that the evidence offered, as offered, is not admissible.

Henry Shriver, Jr., testified: I saw Mr. Black at Mr. Goodman's store half an hour before the shooting; he bought two cigars, and left my store smoking; saw nothing unusual about him.

Dr. Smith, for the prosecution, called: I reside in Cumberland, but am a native of Frederick county; have resided in Cumberland fifty-one years; I saw Harry Black the morning of the occurrence about 8 o'clock; I was returning from the post-office, and observed Black on the corner at Humbird's store; Black crossed over to the other side; I heard the first shot fired.

Mr. WHITNEY. Did you see anything in McKaig's hand?

Mr. SYESTER. I object. This certainly cannot be considered legitimate cross-examination. The prosecution have closed their case so far as evidence of the shooting is concerned.

Mr. Whitney said that since they had closed their case the plea of self-defense had been set up, and they had yet had no opportunity to combat it. He contended that it was legitimate rebutting testimony.

Mr. Syester said that this was cutting up their testimony by piece-meal, and was not rebutting testimony. He contended that it was evidence in chief, and that when the plea of not guilty was put in it was notice to the State to prove their case. He illustrated their position by saying that if after the State had closed its evidence in the first case, and the defense had submitted it on that evidence, and they had sought to open it to introduce evidence like this, would it have been allowed? Mr. Syester cited as authorities 577 1st Archibald's Criminal Evidence, sec. 44; Greenleaf on Evidence; 21st Common Law Reports, page 421. He contended that the prosecution could not develop a part of its case and then rest to see what would be brought out by the defense, and then bring testimony that was brought here for the express purpose of proving their case, and should have been put upon the stand at the opening of their case.

Mr. Syester was followed by Mr. Brengle, who made a lengthy argument urging the admissibility of the evidence sought to be offered.

Mr. Whitney next addressed the Court, and said that owing to the ability with which his colleague had argued the question it was unnecessary for him to detain the Court long. He said that self-defense is an affirmative defense, and necessary to be proved affirmatively, to which the State had the right to reply.

Mr. Nelson, for the defense, said that the State, for the purpose of proving this identical fact, had brought Dr. Smith down here, and they were fully aware of the defense when they rested their case. He had just began his argument when the Court interrupted and said that it was the hour for adjournment, and the Court would adjourn until Wednesday morning at 9 o'clock.

SEVENTH DAY.

Argument of Mr. Nelson upon the Admissibility of Evidence—Decision of the Court upon the Point Raised—Rebutting Evidence Offered by the Prosecution—The Evidence on Both Sides Closed.

The court met precisely at 9 o'clock a. m.; all the judges and other officers of the court in their proper places.

There was no lagging of interest in the trial, and the court-room was, if possible, more crowded than ever.

The decision of the Court upon the question raised on Tuesday was looked for with great anxiety by the friends of both parties, as each considered it of the greatest importance to their case.

Immediately upon the assembling of the court, Mr. Whitney said that before the counsel for the defense proceeded he desired to submit to the Court their proposition in writing, as follows: "The State having proved the killing of the deceased by the prisoner, and offered evidence to prove express malace, (the counsel for the defense having made no opening statement) closed their case. The prisoner's counsel then proceeded to make their opening statement to the jury, and for the purpose of establishing the theory of self-defense, offered evidence to show that the deceased, at the time of the shooting and afterwards, and while he was crossing the street, had a pistol in his hand. To rebut this theory of self-defense and the evidence offered under it, as above stated, the State proposes to prove by Dr. Smith and other witnesses, who saw the deceased during the time spoken of by the defendant's witnesses, that he had no pistol, and that the allegation made by the defense is not true."

Judge Maulsby suggested that the question in the case was not only the admissibility of the fact proposed to be proved, but what is the evidence by which it is proposed to prove it.

Mr. Whitney withdrew the statement.

Chief Justice Maulsby directed Mr. Nelson, for the defense, to proceed with his argument.

ARGUMENT OF MR. NELSON.

Mr. Nelson said that when the court adjourned last evening we were considering the question whether the evidence offered was in chief or rebuttal. All the counsel on both sides have come to the conclusion as to the principles of law governing, the only difficulty is in that particular application to this case. It has been said by the prosecution no notice of the defense now set up, and which seems to be one of the issues in this case, had been given them, and also that the issues in reality have changed. We take issue on both allegations. We have put in the plea of not guilty, a broad plea,

which covers all the defenses, and is notice to the State of every defense which can be made use of under such a plea. We contend that they have had full notice, not only by the plea put in, but that when this case occurred in Cumberland it was stated in the public newspapers of the day that a pistol had been found lying in the street near the deceased; that it was not known who had that pistol, the deceased or the prisoner. Again, our line of cross-examination indicated that our defense would be self-defense, therefore the excuse that they had no notice will not hold. Now, upon two grounds we submit that the evidence to be offered is not competent: First, if a party goes into a case and offers a piece of testimony, and closes with the expectation of offering evidence of the same class after the evidence has been closed, that is certainly not law, as you will see by reference to the case of Brown *vs.* Murray, 21st Common Law Reports. The law found there is applicable to this case. Witnesses were called to prove the fact of killing, and further offered a piece of evidence which, if not for the purpose of self-defense, had no legal meaning, to wit, whether the deceased did not throw up both hands. What bearing did it have on the killing? Was it not designed to create the impression on the mind of the jury that the deceased had no pistol or arms, and for no other purpose? If that is so, it was affirmative testimony, which we had the right to the negative, and which denial they are estopped from rebutting. Another proposition we assume is that everything which occurred around this whole transaction that would go to confirm the theory of the State must be given in chief and is evidence in chief. For instance, in a robbery the State proves the fact of theft, and then rests; the prisoner comes in, proves an *alibi*, and the prosecution, knowing the *alibi* is not true, disproves it in the first place. Can they disprove it again? And in case of larceny the State proves possession of the article stolen and then rests; the prisoner comes in with the defense that he purchased it. Can the State then give in evidence that it was stolen? Certainly not, and I refer your honor to 5 Carr and Payn, page 299; 24 English Common Law Reports, page 340; the case of Rex *vs.* Hildige *et al.*, and 41 English Common Law Reports, page 273. Again, there is evidence here of bullet shots, each one sufficient to cause death. Suppose the State had proven but one shot and then closed, and the defense had set up the defense that before he had time to die of the wound inflicted apoplexy intervened, and proven by medical testimony that it caused death. Is it competent to reopen the case and show that a second shot was fired which caused death? That is no answer to the apoplexy. Can it be allowed to break down the defense in that manner? We hold that confirmatory evidence cannot be given, as it is original testimony. Upon both propositions we are sustained by the authorities, and believe that we may rest the question with the Court.

OPINION OF THE COURT.

Judge Bowie, for himself and Judge Lynch, said that they were of the opinion that the evidence sought to be introduced by the State was admissible, and added that the traverser in his defense

proved that when he fired the fatal shot the deceased had a revolver in his hand, which fell in the street, and closed his testimony in chief. The State produced a witness, who was present at the time of the homicide, to prove that the deceased had no revolver. The traverser objected. The majority of the court are of the opinion that the evidence is admissible, because it is in rebuttal of the testimony of the traverser tending to establish self-defense. The State must in the first instance give evidence of all the facts relied on to prove the offense, and will not be permitted, after the traverser has concluded, to introduce in rebuttal any cumulated evidence to establish the facts which the law demands the State to prove in chief, and will not be permitted to anticipate and rebut any matter proper to be given in evidence in defense. The traverser will be required to give in evidence all facts relied on as matter of defense. When the defense has done with its evidence the State will be permitted to rebut by evidence any fact introduced in the defense as new matter, and this whether it be a part of the occurrence at the time of the homicide or otherwise; that this self-defense is a matter of confession and avoidance and affirmation on the part of the defense, which it is proper should be rebutted, and that, in our opinion, the authorities read by the traverser's counsel do not sustain their theory.

JUDGE MAULSBY DISSENTS.

Chief Justice Maulsby expressed his regret at being compelled, by a sense of official duty, to differ from his brethren of the bench, for the first time since he had the pleasure of occupying it with them, and his thanks to the counsel of defense for the arguments by which he had been convinced that his first impressions in favor of the admissibility of the evidence offered were erroneous. He then read from 1st Greenleaf, section 74, to the effect that a party who asserts the affirmative of an issue is entitled to begin and reply, and having begun, is not permitted to go into half of his case, and resume the remainder, but is generally obliged to develop the whole, regard being had to the substance and effect of the issue rather than to the form of it, the test being whether the defense is indicated with sufficient particularity to render the plaintiff's evidence intelligible, and to note B to section 81, to the point that in criminal cases the burden of proof never shifts, but is on the State throughout, and that the State is bound to prove that the prisoner is guilty *in manner and form as charged in the indictment;* and to section 469, that the State must put in its whole evidence to every point on which it opens, and then the prisoner must put in his entire case, and the State's reply must be limited to new points first opened by the defense. He referred to 1st Carrington and Marshman, 500; 2d Carrington and Payne, 415, and Ryan and Moody, 254. The principle announced in the last case is that when but one transaction is in question the party maintaining the affirmative must put in chief all the evidence relating to that transaction, and will not be allowed to give in reply any evidence relative to that transaction.

The application of the law so stated to this case he made as follows: That the State had proved in chief the transaction resulting in the killing—the meeting of the parties, their attitudes toward each other, the firing, the fatal shot, the fall, the death, &c., &c. He said that the State was bound in law to offer in chief all the facts of that transaction, and could not prove in chief some of the facts, and, in reply, other of the facts of that one transaction; that is, the State was bound to give in chief all the evidence pertaining to that transaction, so as to describe it fully according to its real character. Having closed its proof, the defense produced evidence describing the same transaction in a different manner, and had stated some facts attending the transaction which the State's witnesses had not described to exist, as the having in his hand by the deceased a revolver at the time when the prisoner fired the fatal shot. Now, the State offers to call in reply other witnesses to describe the same transaction, and to prove that they did not see the revolver in the deceased's hands. He thought that this would be merely to repeat the evidence in chief, to prove the same description of the transaction which the State had proved in chief. The admissibility of the proof offered in reply, he said, was supposed to rest on this: That the State had not proved in chief the fact of the deceased not having a revolver in his hand, and the defence having proved the fact that he did have it, that was a new fact proved by the defense which entitled the State to reply to it by proving that it was not so. This, the judge said, was confounding facts proved on each side of an issue with the evidence on each side. That is, the evidence to a transaction embraces all the facts attending it, and all the evidence being required to be put in and then replied to. The evidence so given on both sides went to the jury to enable them to determine what the facts of the transactions were which the evidence proved. If the doctrine contended for could be correct then each separate fact could be proved by the evidence on both sides to that fact, which was but one of the many facts attending the narrative of one transaction, and so the issues and the order of process on them would be multiplied *ad infinitum*, each fact attending the principal fact forming a seperate issue, so far as the ordinary proof was concerned. The proof offered could only be to prove all the facts, or some of the facts, attending the one transaction already proved by the State in chief, and was equally inadmissible whether it were simply to repeat testimony given in chief, to prove the same fact, or to prove some of the facts of the affair, all of which the State had proved, or was bound to have proved in chief. The result would be that when a party proved his side of an issue, and the opposite side proved his version of the same matter, without introducing any new collateral fact, but simply proving the same affair to be different from what the first party have proved it to be; the first party could have the last only by calling other witnesses to prove that it was as his witnesses had first proved it, and not as the defendant's witnesses had proved it. This was not the law of evidence.

He said that if the defense had proved any new fact collateral to the transaction, or disconnected and apart from it in respect to

the tenor of its occurrence, the State would be at liberty to offer proof in reply in respect to that collateral fact. But that was not this case, and he thought the proof offered in reply was clearly inadmissible.

Dr. S. P. Smith recalled for the prosecution: I saw McKaig almost simultaneously at the time of the first shot; saw the smoke when not much higher than a man's head; saw his hands distinctly; he had no pistol in his hand, and saw none till the time the body was taken up; I was at no time more than nine steps from him, sometimes not more than five; I saw the body in the office, and assisted in carrying it in; I know Charles Medore; my impression is Charles Medore did not unbuckle the belt; I would not allow any person to go to the body until his friends came; I told the brother of the deceased when he came to take everything into his possession; he, in opening the vest, disclosed the belt; I did not see the belt before then, as it was covered by the vest; there was one pistol in the holster fastened down by a flap buttoned; the other holster was empty; perhaps Medore assisted in removing the body; there was no obstruction between the body and myself, but I had an unobstructed view; my eyes were on him (McKaig) from the first fire.

Mr. WHITNEY: What was W. W. KcKaig's character?

Mr. Syester objected.

Mr. Whitney stated that the defense had offered testimony as to the character of Black for peace and quietness, under the theory that he acted in self-defense, and the killing was the result of a mutual rencontre, to show the improbability of *his* having made the first attack. To meet this theory the State now proposes to prove the good character of McKaig for peace and quietness to establish the improbability of his having made the first attack, as assumed. The Court sustained Mr. Syester's objection, and the Court excluded the testimony.

Cross-examination by Mr. SYESTER:

His body was in the office, but how long I know not; I think there were three or four persons present; they were not strangers, but I have forgotten who they were; when I saw McKaig he was down off of the pavement, out of the gutter, backing into the street, with face obliquely from me, and his hands up in an imploring position; I do not say Medore was in or out of the office, as the crowd there became large very soon; the people living in the direction the shots were going scampered in-doors; my attention to the affair was first called by an exclamation just outside, as I was sitting at my writing desk; I do not say positive that the body was untouched until Mervin McKaig came, which was in about fifteen or twenty minutes; I examined the body; I did not see pockets in the rear of his pantaloons, or any pocket torn out; Mervin McKaig unbuttoned the vest and unbuckled the belt; he opened his vest at my suggestion to take out his brother's papers and valuables, and then it was I saw the belt; I can't say where

the belt was located, only about the waist; can't locate the particular spot; one of the holsters was empty, the one that had the flap torn off; the pistol was put into the holster by Mervin McKaig and the belt buckled about himself; when he went away he took the pistol with him; I came up street that morning, but not certain from where, may have been to other places than the post-office; the body when brought into the office was laid on a settee; the vest was not opened, that I know of, before Mervin McKaig came; I forbade any person to go near the body.

A. Edfield next called and examined by Mr. Whitney: I reside in Cumberland, but am originally from Pennsylvania, I am clerking in Craigen & Co.'s drug store; I saw where the body of McKaig lay, and saw it raised up to be taken in the office; as it was raised up I saw a revolver fall from the body; I don't know who picked it up; it lay about a foot from him; I saw Black after the shooting; he stepped back on the pavement with a revolver in his hand; I saw McKaig as he was falling, just about touching the ground; as the body was carried to the office I followed, I did not see any one pick up a pistol.

Cross-examined by Mr. SYESTER:

As his head was raised up a pistol fell from the left side; I did not see the whole of the transaction; I heard only three shots; I was engaged in conversation with another gentleman and could, I think, have heard the other report if it had been as loud as the rest; I don't remember of having had a conversation immediately after the shooting with Mr. Mickey; I often have conversations with Mr. Mickey, as he is one of the firm in whose store I stand.

Mr. Cahill called and examined by Mr. Whitney: I was not exactly present when the body was taken up, but I was running toward it; I saw something fall and I was impressed that it was a pistol; it was picked up by Mr. Turney near the body, which I saw.

Dr. Smith was recalled: One of the holsters was buckled up with a pistol in it; the other was empty and the flap cut off.

Mr. Morehead called and examined by Mr. Whitney: I am the party who assisted in picking up the body of McKaig; I live in Cumberland and was in my store on that morning; as I raised the body up it is my impression that something jingled on the stones of the street, I did not stop to look at it or pick it up, but continued on carrying the body in the office; in raising the body up the coat hung down so as to obstruct my view; I saw McKaig from the time he was on the opposite side of the street from Black until he was killed.

Cross-examined by Mr. SYESTER:

I was loading a dray with a stove and furniture; had got the stove on and had gone into the store to get the furniture when I heard the first shot fired.

George M. Gross called and examined by Mr. Whitney: I was up stairs above Mr. Morehead's store, looking out the window when the body of McKaig was picked up; I saw a pistol picked up by Mr. Turney, near the body, about the middle of the street.

Cross-examined by Mr. SYESTER:

I am the same witness who was up before, and was prevented by counsel from stating this fact before.

Mr. SYESTER: Was that the reason you did not swear to the whole truth as you now swear?

WITNESS. Yes, sir.

W. M. Buckholdtz called and examined by Mr. Whitney: I was in the store door of Clabaugh & Ryans, in Cumberland, on the morning of the shooting; the store is near the bridge; the diagram shown me represents the door correctly; I was at the store door after the first shot, but not at the time it occurred; I only saw Dr. Smith on the opposite side of the street; Mr. Connor was in the store; Dr. Himmelshine had been there, but had gone out; I saw no colored man there or about the place; I did not see Mr. Connor come in the store, but I am certain he was at the water-cooler when the first shot was fired.

No cross-examination.

Dr. Dougherty called: I was not in Dr. Healy's shop when the body was brought in, but about fifteen minutes after it had been placed there; Mervin McKaig opened the vest; Dr. Smith called his attention to the belt, and he unbuckled it, and put it around his own body; I am acquainted with the localities at the Revere House, and made an examination of them yesterday and last night; there is a verandah attached to the hotel; the Revere House stands on a line of six feet behind the Green House below it; the verandah extends about two feet from the hotel; standing at the corner of the hotel you can only see the outside of Little's sign near the end of pavement, and then must look through an opening in the railing of the verandah; the Green House and railing obstruct the view; you might recognize a man in broad daylight from the corner; I made an examination last night; could see the light, but could not distinguish any person passing by it; a friend of mine went over to the corner to try it, and it is impossible to recognize any person standing at the Revere House; the light at the railroad ticket office at the Revere House throws a light into the street, and leaves a person standing by it in the shade, rendering it impossible to distinguish whether it is a white or black man.

Mr. WHITNEY. Do you know the general character of John Long?

Objection being made by Mr. Nelson, the question was withdrawn.

Cross-examination by Mr. SYESTER:

I made the examination yesterday, and this is my first visit to

Frederick during this trial; I made the examination at the request of Smith Johnson, who asked me to go with him; he said, "Did you see John Long's testimony?" I replied "yes."

[The witness was here going to express an opinion about the testimony, when he was stopped by the defense.]

The witness then continued: The Revere House is about six feet in the rear of the Green House; the Green House is a saloon, and has, I think, two windows in front, and oval glasses in the door, though I do not know for certain, as I do not visit such places; I could not see because the verandah obscured the view; there is a barber-shop under the Revere House, and if you look under the verandah you can see the entrance to it; the verandah runs nearly up to the corner, and is about six feet high; the railing around it about two and a half feet from the floor; the platform descends, and you must dodge down in order to see under the verandah; there is generally a light hanging out of the Green House; there is a light at Ferguson's saloon; the saloon stands on a line with the Green House; the Green House is above Ferguson's; there is a little alley between the Revere House and the Green House; there is a saloon under the Revere House; next, I think, the Green House; I think there is a lamp-post in front of the Revere House, but no lamp; there is no light in front of the barber-shop; I have not been extraordinarily active in this case; the lamp in front of Ferguson's saloon is a large one, but I don't think it was lighted up; one also at the Green House, which was not lighted up, nor the one at the other saloons.

Mr. SYESTER. Why did you make the examination without having the lamps lighted?

WITNESS. Because I made it in broad daylight, both in the morning and afternoon; I made it first by myself, and then in the afternoon with Mr. Johnson, at his request; I don't think I could have recognized any person from the corner of the Revere House coming up the street, as the opening to look through the verandah is only about three inches wide; I did not send any person down to walk up, as I thought it not necessary; the strongest lights, if lighted, would be in the rear of any one walking up street, and not in front; the dim ones would be in front; I have not taken an unusual amount of interest in this case; what interest I have taken is caused by my opinion that an outrage had been committed in the community by shooting; I did look up some testimony, because once I became near being murdered without cause in the same way.

Re-examined by Mr. JONES:

I have lived in Cumberland twenty-five years, and practiced medicine there twenty-four years; I interested myself in this case only as a good citizen should do, and denounced it in the office where the body lay; my life was threatened without a cause once, on political grounds, not that anything of this character was imputed to me; John Resley attempted it, and the sheriff caught the pistol from him; I myself had heard of his threats, and meeting

him took a pistol out, and laying it in my hands, said to him that I was prepared for him, likewise that I had heard of his threats; the sheriff took the pistol from John which he had; he is a desperate young man.

Mr. SYESTER. Did John Resley have a pistol in his hands when you pulled your pistol out?

WITNESS. I saw none.

Mr. SYESTER. That is the way your life was threatened, is it?

WITNESS. Yes, sir.

Smith Johnson called and examined by Mr. Whitney: I heard John Long's testimony; I partly examined the locality; the ticket office was lighted when I examined it last; by the light it was impossible to tell a pistol or gun; I leaned against the corner and looked towards Mr. Little's, down street; I had to look through the verandah, which so obstructed my view that I could not recognize any one at Little's store.

Cross-examination by Mr. SYESTER:

I left here on Saturday evening at 7 o'clock; did not leave for the purpose of making the examination, but to go home to Cumberland; I first went down to the Revere House on Sunday at 10 o'clock, to examine the locality Long testified to, and again on Monday at 1 p. m.; the first time I went alone; the second time with Dr. Dougherty; I made three examinations, the last this morning at 2 o'clock, when I left Cumberland for Federick; I did not look down street then; Dr. Dougherty and John Cruzin were there, helping to make the examination; Cruzin came there not by my request; he said he had heard that the money drawer of the Revere House had been broken open, and the money had been stolen, and he came up to see about it; he heard it when they came to his saloon for a policeman; I have been in Cumberland seven or eight years; I am engaged in the coal business and life insurance and real estate agency; I may have been active in this case; I may have been looking after witnesses, and may have asked some of them what they knew; I told Mr. Benan that Mr. Whitney or Mr. McKaig wanted to see him; but he did not go; he is the only one I asked to go; I did not ask any of the witnesses for the defense what they would prove; I was at the place of shooting half an hour after it occurred, and did not use much intemperate language; I have not offered to bet that the prisoner would be convicted and hung; some one said that he would bet two to one that the prisoner would be acquitted, which I said I would take, but there was no bet; I had not inquired into any of the privacies of this case before returning to Cumberland.

Dr. Healy called and examined by Mr. Whitney: I called Dr. Smith's attention to the shooting; I was sitting in the office window waiting for my horse; I am lame and can't walk much, therefore use a horse; while sitting there I observed the two gentlemen.

Mr. McKaig and Mr. Black; I kept my eye on them; I saw Mr. McKaig's hand; there was no pistol in it.

Mr. Syester objected to the testimony, as he had been examined in chief to the same thing, and said he himself asked the questions on cross-examination, and that the witness replied that such was his position that it was impossible to see a pistol in McKaig's hand if there was one.

WITNESS. Mr. Syester, I made no such statement as that, and don't recollect having said anything about it yesterday, though I might.

Mr. Syester contended that an examination had been made before on the same thing, and produced notes of a reporter to sustain himself. The Court ruled the question not proper.

Dr. Healy resumed his testimony: I conversed with Mr. Wolfe several times about it; Mr. Wolfe never said he saw a pistol in McKaig's hand; Mr. Wolfe told me he never did see one in his hand.

Mr. Nelson objected to the last answer, as it tended to impeach Mr. Wolfe, and a proper foundation had not been laid.

The Court ruled the answer inadmissible.

WITNESS. I never heard of a pistol being in McKaig's hands until I came to Frederick.

Cornelius Conner was called and examined by Mr. Whitney: I was walking to the liquor establishment of Clabaugh & Ryan, and McKaig passed as I went into it; was in about one or one-and-a-half minutes when the shot was fired; had just cleverly got in and immediately came out; I did not see a colored man there or about; I saw only Dr. Hummelshine and Mr. Buckholtz.

Andrew Gonder called and examined by Mr. Brengle: I know when McKaig was shot by Mr. Black, Sr.

Mr. SYESTER. We object to that, as it does not rebut anything given in evidence by the defense.

Mr. Whitney said the defense had offered Lloyd Lowndes as a witness to prove that the fact of McKaig being the seducer of Black's sister was first communicated to him on the Sunday preceeding the killing. The State, for the purpose of showing this testimony untrue and absurd, proposes to prove by this witness that some four months prior to this murder Black's father had shot and severely wounded McKaig with a double-barrelled gun on one of the principal streets of Cumberland, for the very same cause now set up by the son; that Black, Sr., was arrested at the time for an assult with intent to murder, failed to appear before the grand jury, and the whole affair published in the three Cumberland papers; that the jury, as sensible men, could draw no other conclusion but that young Black, who was there at the time, must have known of the shooting and its alleged cause.

The COURT. Do you further propose to inquire when the fact was conveyed to the prisoner?

The counsel for the prosecution consulted for a moment, when Mr. Brengle arose and said the State would now rest its case.

The counsel for the defense, after a short consultation, stated they would also close, at which announcement there was quite a feeling of suprise manifest among the audience.

Chief Justice Maulsby stated that the Court would adjourn until Wednesday morning, at 9 o'clock, when the arguments would be heard.

ARGUMENT

OF

ATTORNEY GENERAL JONES.

MAY IT PLEASE THE COURT AND GENTLEMEN OF THE JURY, in the discharge of the responsible duty which my official position imposes upon me, I desire to address you in plain words. I wish to impress upon you the grave and solemn responsibilities of the duty which the State now calls upon you to perform. I share with you in the sentiment that the duty is as painful and unwelcome as it is solemn and important. But your State has the right to demand your services in whatever capacity the public interest requires. And, whether you are called upon to peril your life upon the field of battle in her defense, or, in her civil service, you are called upon to sit in judgment upon a question involving the life of a fellow-being, the State expects and requires you to nerve your heart and mind to the high and stern performance of your whole duty. Already you have listened to appeals and witnessed scenes in the course of this trial well calculated to swell the fountains of your sympathy for the prisoner and his sorrowing parents. They have been in your presence during the long and weary hours and days of this trial; and doubtless in the addresses which will be made to you by the very able, zealous, and eloquent counsel for the defense, nothing will be left unsaid which may tend to excite your emotions of pity and sympathy for the prisoner. I know you are but men, and that such emotions, in listening to such appeals, and witnessing scenes of distress, spring up in the noblest hearts and often mislead the most honest minds. The stern performance of a painful duty under such circumstances is often most difficult. The example of the Roman father, whose high public duty demanded of him the sentence of death upon his own son, has been held up to the admiration of successive generations as a heroic triumph of public duty over parental emotions. Our laws do not impose such anguish upon those now called to the performance of such public duty. They do not require or allow a man to be judge in his own case, or in that of a relative, even in civil suits. Just and impartial minds are to weigh the evidence and pronounce upon the law. They are to discharge this duty under the most solemn and binding sanction which can influence the conscience of men. You have been selected and assigned to duty in this case. To enable you to perform it aright, the Constitution has invested you with the highest possible powers. It declares that in all criminal cases the jury shall be judges of law as well as fact. If you convict, the Court has a discretion, upon good cause shown, to grant a new

trial before another jury. But if you acquit there is no earthly tribunal which can try the party again for the same offense.

In view of such powers and such consequences you are called to try this case. The law has afforded the prisoner every possible safeguard against injustice. The eloquent counsel, who made to you what he called the opening statement for the defense, complained that the State had caused the trial to be removed from Cumberland where this tragedy took place, and where the parties were best know. The record shows that this was done after eight jurors had been sworn, and upon the oath of the State's attorney that the State, in his judgment, could not have a fair and impartial trial of this case in that county. Under these circumstances it was removed, and it may be fairly inferred that the necessity of the removal for the purposes of justice was forced upon the mind of the State's officer while the selection of the jury was going on. But the State has provided the prisoner with every facility for a fair and impartial trial here. The attendance of every witness he desired has been enforced. He has freely exercised his right of peremptory challenge, and challenge for cause, until a jury has been selected, to which he can take no exception. And from the high character for intelligence and integrity awarded to you from every quarter the best guaranty is afforded for the faithful administration of the law.

A jury of twelve honest, upright, impartial men, experience in the affairs of common life, is universally admitted to be the best constituted tribunal for the trial of controverted facts, and for the ascertainment of the motive of acts, which the accumulated wisdom and experience of past ages has been able to devise.

But I again invoke you to bring to the consideration of this case a calm judgment and a stern resolve. I invoke you to remove from your minds any impression which may have been made upon them by the impassioned eloquence of the opening counsel for the defense upon a detailed statement of a case of seduction, which has turned out to have existed only in his excited imagination, and of which there is not before you one particle of legel evidence. And this brings me to remind you upon what you are to found your verdict. You are not to try this case by excited emotions of sympathy for the present distress which your eyes may see. The anguish of a deep grief crushes the broken hearts of mother and wife of the deceased William W. McKaig in the seclusion of their distant homes. The shock of his instant death which closed the places of business in the town of his home, and sent unusual multitudes of sorrowing citizens to his funeral, has not ceased to vibrate in the memory of those who best knew him, and whose confidence and respect he had so generally inspired. But these are not the considerations by which you are to be influenced in your verdict.

Whatever of pity and sorrow you may feel as fellowmen for those, whether present or absent, whose hearts bleed under the consequences of this terrible tragedy, must cease to disturb the calm operations of your sober judgment, as public officers of the law, charged with the responsibilities of a high public duty.

When this indictment was read to you, charging the prisoner

with the highest crime known to the law—murder with malice aforethought—you were informed that it was perpetrated against the peace, government, and dignity of the State of Maryland. These are to be vindicated. The sanctity and security of human life is to be vindicated. The very foundations of law, government, and civil society are involved in the questions submitted to your consideration. And by what rule are these questions to be decided? Of what law has the constitution made you judges? I beg to remind you of the terms of that oath, for the sanctity and due observance of which you have severally made your solemn appeal to God, "you shall well and truly try, and a true deliverance make between the State of Maryland and the prisoner at the bar whom you shall have in charge, and a true verdict give according to the evidence, so help you God." Your verdict is to be founded upon the evidence of facts legally before you, and upon the existing established law for the punishment of homicide. The definitions of murder in the first and second degrees, and of manslaughter, and the well-defined distinctions between those crimes have been already made known to you. I may advert to them again in the application of the evidence.

I now beg you to contemplate the facts which are in evidence before you. It has been shown that the prisoner and the deceased, Colonel McKaig, were both natives of Cumberland; that both left their homes, and were soldiers in the Confederate army in the late war between the States; they had both periled their lives for the "lost cause;" they were both familiar with the use of the pistol and with scenes of imminent personal danger. It is not pretended that it was a case of a brave, fearless, and dangerous man on the one side, and of a kind, nervous, frightened man, unused to the sight and practice of fire-arms, upon the other. It is important to bear this fact in mind, especially in considering the theory of self-defense which is attempted to be established.

The facts attending the tragedy of the fatal morning of the 17th of October last, which are proved beyond possible question, are that early on that morning the prisoner was seen in the vicinity of the place of business of the deceased, and looking into his office. For what purpose was he there? What was his motive? This, gentlemen, you are to infer from his acts and conduct. God only knows with absolute certainty the secret workings of the human heart. If such knowledge were required in human affairs, it is manifest that the administration of human government would be utterly impossible. Omniscience is the indispensable attribute of God who governs the universe; but He has made social life—the dwelling together of men in communities—the law of man's existence. Hence results the absolute necessity of civil government as a divine institution. For the purpose of its rightful exercise God has endowed man with an immortal soul, and with the high faculties of reason and conscience.

Our laws, then, are made by *men* for the government of *men*, and to be administered by men; and whenever in human affairs the question arises with what motive an act was done, you have to judge of it by your knowledge of your own hearts, passions, and emotions, and by the light which experience and observation

afford. In this way you judge of the condition of mind, the purpose, the motive with which an act was done; and for this purpose you are to consider all the surrounding circumstances of the particular transaction. And you remember that it was to show to you the condition of the prisoner's mind at the moment of firing the fatal shots that the Court admitted in evidence conversations held with him, on Saturday evening previous, by Henshaw, and on Sunday by Lowndes and the prisoner's mother. You are better informed as to what those communications made to the prisoner were than I am. You heard the statement of the witnesses. Not having been present on that day, I know the testimony then given only from the newspaper accounts. Whether those reports were correct or not you will judge. From them I learn that the evidence of Mr. Henshaw was to the effect that he had, on Saturday evening, inquired of young Black if the grand jury had indicted his father, and he said they had not. The witness told him that he had two reasons for believing they would indict his father; one, because Beale McKaig had told him they would; the other, because he had heard that Colonel McKaig, at the fair grounds, had denounced his sister as a common strumpet; that young Black replied he had not been able to learn the truth of that report of the remark of Colonel McKaig. Witness further told him that he had heard that, at the fair grounds, Colonel McKaig had told Black's father that whoever said he (McKaig) was the seducer of his sister was a liar; upon which Black said, "My God, is it possible!" changed color, and seemed much excited.

On cross-examination this witness stated that he had read in the Cumberland paper that the prisoner's father had shot Colonel McKaig. That publication had been made several months before, and it would seem incredible that the prisoner could have remained ignorant of the shooting, and of the alledged cause of it. Evidently the conversation of Henshaw was predicated upon his belief that the prisoner was fully aware of the shooting, otherwise he would not have asked the prisoner whether the grand jury had indicted his father; and the reply of the prisoner *that they had not* is inconsistent with the theory attempted to be set up by the defense, that the prisoner was then for the first time informed of any cause for such indictment. Then, if for several weeks or months he had known of the shooting of McKaig by his father, and of the alleged cause of it, he was on that Saturday evening informed that Colonel McKaig had, in the most emphatic terms, denied that he was the seducer of the prisoner's sister. With this information he went home, reaching there, as his mother states, at about 11 o'clock that night. It does not appear from her testimony that he manifested any unusual excitement that night. No inquiry by the defense appears to have been made of her upon that subject. The inquiry by the defense was, "What happened the next day?" The reply was, "He went up town as usual after breakfast; he always goes up on Sunday, when at home, to see his aunt; that she knew what had been told him; she knew he had been told all." Then Mr. Lowndes testified that between 9 and 10 o'clock on Sunday morning the prisoner went to his house, and he informed him of the letter from Colonel McKaig to his sister.

On cross-examination the witness stated that they were talking in reference to preparing his father's defense. The witness was counsel for the father.

It has been shown by the record that the father had been presented to the grand jury, on Friday, the 14th of October, 1871, for shooting W. W. McKaig, with intent to kill him; and that on Saturday he had entered into recognizance for his appearance to answer that charge.

Mr. Lowndes told the prisoner that his sister would have come on; and that he, the witness, was informed Colonel McKaig was the seducer of his sister; and the prisoner seemed distressed over the ruin of his sister. From Mr. Lowndes the prisoner went to Mr. Roman's; Mr. L. soon followed, and saw the prisoner read the letter which has been shown and read to the jury. In reference to that letter, you will observe that it bears date June 20, 1866, about four years before the birth of the child, which has been spoken of. The letter itself is of singular import, and it comes before you in a mysterious way. It is alleged to have been written by Colonel McKaig to Miss Black; but there is no evidence whatever that either of them ever saw the letter. Where it came from, who tore it, who put the pieces together, in whose keeping it has been for these four years and more, why it has been kept, and how it finds its way here are left unexplained. Mr. Resley testified that he believed it to be in the handwriting of Colonel McKaig. But evidence of handwriting, especially after four years have elapsed, can not be free from great uncertainty. The letter itself shows, upon its face, that it has been tampered with since it was written. It was evidently written in pencil, and has since been inked over, for the pencil marks are yet visible all through it. It is now written in a plain, round hand, so legible that no one can have any difficulty in reading it. And yet at the bottom, there are added these words: "If you read this, you will do more than I can." This, too, is traced over with ink; but the pencil marks appear. It is stated also that these parties were of high respectability in Cumberland, and that Colonel McKaig was a well-educated gentlemen. This letter bears upon its face evidence that it had no such origin as is now alleged. It bears the impress of ignorance and vulgarity. It would seem incredible that it could have been written by Colonel McKaig to Miss Black.

But *by* whomever and *to* whomever written it affords not the slightest indication of a case of seduction. It manifests a shocking case of familiar, criminal intercourse. It purports to be a reply to a letter received, which upbraided the receiver with not wanting to see her, and that he was losing all love for her.

But it will be for you, gentlemen of the jury, to determine from all the circumstances whether the prisoner did believe it to have been written to his sister as represented to him, and what effect it had, or ought to have had upon his mind after the interval of nearly twenty-four hours for cooling reflection.

It will also be for you to determine what effect the conversation between the mother and Mr. Lowndes, on that Sunday evening in the hearing of the prisoner, had upon his mind; and how far it en-

tered into the motive for his conduct and acts on the fatal Monday morning. You will bear in mind that Mr. Lowndes testifies that he went to Mrs. Black's that afternoon, inquired of her where her daughter was, and told her that she would have to come on to the trial of her father; that after refusing, and being told that her husband would probably be sent to the penitentiary the mother finally stated where the daughter was; that she had given birth to a child, which was four months old, but that the father would have to take the chances of his trial without her testimony, for her daughter could not be brought to the witness stand in his case. But it may be asked, why not? It could not add to the daughter's disgrace to go upon the witness stand and testify that all that high-wrought, impassioned tale of seduction to which you listened in brother Syester's opening, was but the literal truth, if she could truthfully so testify. It is true McKaig was then living and was a witness for the prosecution. But if in 1865, when he met her, she was a pure and virtuous woman, and so universally held esteemed in the town and neighborhood of her residence, what have conscious truth and virtue to fear even in a conflict of testimony before a jury in such a case? But McKaig is now dead. No such conflict from him is possible. The brother is on trial for his life for murder, and yet notwithstanding what you were told in that extraordinary and astounding address, she is not put upon the stand; no offer to do so has been made. But this terrible charge against the deceased McKaig is left to rest upon this miserable, stale letter, and loose, hearsay declarations. The jury will recollect that when the letter was offered in evidence, the counsel for the State inquired the purpose, and were told that the defense offered to prove, by competent evidence, that the prisoner's sister was seduced by the deceased, and had borne a child as the result; that these facts were made known to the prisoner prior to the homicide, and has caused intense mental agitation, for the purpose, first, to show the condition of his mind at the time of killing the deceased, and second, to enable the jury to determine the grade of homicide. To this the State replied that the letter had no tendency to prove seduction, which charge the State was ready to meet, if legal evidence to establish it was offered and admitted, and the State was permitted to rebut it. The Court ruled that it was not competent in this case to prove the fact of seduction, but that the communications made to the prisoner might be given in evidence to show the state of his mind, and to determine the grade of the homicide. Well, you have all that evidence before you: the letter, the charge against McKaig, resting on hearsay; his denial; his rumored stigma upon the sister; the birth of her child; the pending prosecution of the elder Black; the danger of the penitentiary, if the sister does not come on to be a witness, and the mother's declaration that, whatever might be the consequences, her daughter could not go upon the witness stand. The mother thinks the prisoner did not sleep that night, but passed the night in deep distress and nervous agitation. The two subjects of discussion and consultation during the day and evening doubtless occupied his thoughts during the lonely watches of that night; these were his sister's disgrace

and the father's danger of the penitentiary. He had been told that McKaig was the author of both. He had the entire day and night for reflection and "cooling time." Toward morning he fell asleep. When he awoke, near 7 o'clock, the mother conversed with him, but does not describe him as in a transport of passion or phrenzied excitement. On the contrary, he was comparatively calm—did not care about being too late for the cars—had bills to pay, and could go on the 2 o'clock train, and thus he started toward Cumberland. He was next seen at Shantytown, in a store, buying cigars, and left the store smoking, going in the direction of the foundry, which was McKaig's place of business. Mr. Arrick saw him walking slowly by the foundry, looking into the office, with his hands in the pockets of his overcoat. Cragin saw him at the corner of Baltimore and Mechanic streets, walking slowly and looking over the bridge, which McKaig must cross on his way to his foundry. Mr. Hughey, as he was passing, saw him in the recess of the door of Shriver's drug store, and when the prisoner stepped out upon the pavement, went back to him and held a short conversation with him; noticed that he kept his right hand in his overcoat pocket, which seemed to be occupied by something more than his hand—he gave Mr. Hughey his left hand, and after the few words of conversation, left Mr Hughey rather abruptly. Dr. Smith had also seen the prisoner standing in the door of Hambird's store, which commanded a view of the bridge.

Thus the prisoner is shown to have passed a full half hour in that vicinity. For what purpose was he there? He is not shown to have transacted any business, or to have paid any bills. At length Mr. McKaig is observed to cross the bridge and following his accustomed way, he goes over to the south side of Baltimore street, proceeding to his place of business. At this moment he is obseved by Dr. Healy, who, happening to look up the street, saw the prisoner approaching McKaig on the same side of the street. Dr. Healy being upon the opposite side of the street, kept his eye steadily fixed upon the two young men. When within a few steps of each other, the prisoner suddenly made a few quick steps and fired upon McKaig. The position of the wound and course of the fatal ball, as described by Dr. Duvall, show that the parties were side by side when the first shot was fired, Dr. Healy, Dr. Smith, and several others who saw the parties instantly after the first shot, testify that McKaig threw up both hands, and had nothing in either; had evidently received a mortal wound; backed off the pavement into the street, facing his assailant, was again shot at, as he was backing diagonally across the street; that the prisoner then left the pavement, crossed the street to near where McKaig was clinging around a sign post, fired a second ball into his body, and, as the dying man was exerting the last staggering effort of his failing strength to escape from his pursuer, and was falling to the ground, a third shot into the almost lifeless body, was the final act in this bloody tragedy! Thus was William W. McKaig, without a word, or a moments warning, shot down, dead, in the street of Cumberland, by the prisoner at the bar.

From this act, as has been read to you, and is not denied, the law implies malice aforethought, constituting the crime of willful,

deliberate, and premeditated murder. Because every man shall be held to intend the natural and inevitable consequences of his act, the burden of proof is upon him to satisfy the jury of the contrary. This is admitted; and the able and eloquent counsel for the prisoner have suggested two theories of defense, by both or by one or the other of which, they propose to rebut the legal presumption of deliberate malice. The one, is their theory of provocation, that is, a sudden injury or insult of such character that human nature is not able to bear it, but is roused to such phrenzy of anger, to such a transport of passion, that in the heat of blood and without malice, he takes the life of his fellow. But the law is, that if, between the injury or insult and the act of killing, there has been sufficient cooling time for reflection and for reason to resume its sway, the act will be murder. I propose to read to you some instances to illustrate what has been held to be sufficient cooling time—Mr. Jones read from Wharton's American Criminal Law, several cases upon the point—and then proceeded. You will thus perceive that the case before you comes far short of falling within the principles of the cases I have read. Where is the evidence of such heat of blood, or ungovernable passion, suddenly aroused, without previous malice, impelling to this fatal act? Look through the entire evidence attending each successive step of the prisoner from the moment of his awaking in the morning, till the final bloody act and, with your hand on your hearts and your conscience alive to the oath you have taken, say if you perceive anything but a calm demeanor, a patient looking and waiting for his victim, and the deliberate execution of a well-planned purpose.

The second theory of the prisoner's counsel is, that he took the life of McKaig in self-defense. Now, gentlemen, you cannot fail to see how utterly inconsistent, and mutually destructive these two defenses are. Provocation, exciting a person to ungovernable furry, drives him to seek the author of it, and to attack him; while self-defense is just the reverse. The person who sets up self-defense, must decline a combat, if he can. The old common law required him to retreat to a wall, or as far as he safely could consistently with the preservation of his own life. And the utmost extent to which, even now, the law allows, or has ever allowed, a person who has committed homicide to excuse the act on the ground of self-defense, is to show conclusively to the jury that he committed the act in the real, *bona fide* belief that it was absolutely necessary to the preservation of his own life. The same legal presumption of malice which constitutes murder, continues to exist until the prisoner rebut it by proof, clear and satisfactory to the minds of the jury, that he acted solely under a sudden impulse of self-preservation, in the presence of a danger, which he actually believed, at the moment, to be imminent and inevitable, except by killing the assailant. You will bear in mind that the burden of this proof, as in the case of provocation, is upon the prisoner. Now, what particle of evidence has been adduced to show that the prisoner had any reason whatever to apprehend an attack upon him by McKaig? As to the story of Long it is shown by two witnesses who have examined the location in which he states he stood and saw

McKaig holding a pistol behind him, at the corner of the Revere House, watching Black as he approached him, that it is impossible the statement can be true, because of obstacles in the line of vision, as described by Long. But suppose the statement to be true. It proves that McKaig, pistol in hand, concealed by the corner of the house, watched Black till he approached within ten feet of him; and when Black stopped, turned, and went up the street again; that McKaig leisurely followed him, as far as Long saw them. But according to this McKaig, having the fullest opportunity to shoot Black, if he desired to do so, did not molest him. And when McKaig was charged by Black with jostling him in the billiard saloon, the witness says, McKaig said not a word, but turned and went out. What reason, then, had McKaig to make an attack on Black, or had Black to apprehend such attack? Not the slightest so far as is shown by the testimony. Is there any creditable evidence that previous to, or at the moment of, the prisoner's firing the first shot, he had any reason whatever to apprehend danger to himself from McKaig? In the opening statement to you of what the defense expected to prove, it was said that McKaig, when near Black, changed his cane from his right to his left hand, and presented his pistol, but Black, having a self-cocker, was too quick and fired first. Now, I submit to you, gentlemen, whether that statement has been sustained by a particle of evidence. Medore testified that he was in his shop, standing with his back to the window, when he heard the first shot; he turned round, looked through the window pane and saw McKaig crossing the street on a trot, with a revolver in his hand. Then, confessedly, he did not see the parties meet on the street, and could not testify that McKaig had a pistol in his hand before the first shot. Dr. Duvall testified that the shot in the side, which, from the testimony, you cannot doubt was the first shot, was mortal; that its effect was almost instantly to paralyze the heart and brain. And Dr. Healy, who was intently watching both, swears that McKaig, at the first fire, instantly threw up both hands, and that it was impossible, according to his belief, that he could have had a pistol in his hand, or that it could have dropped out of his hand without his seeing it. Mr. Wolf was standing by Dr. Healy, and states that he saw a pistol fall from McKaig's hand, after the first shot. But Dr. Healy states that Wolf told him, at Cumberland, that he saw no pistol in McKaig's hand; that he, Dr. Healy, in all the talk about the events of the morning, in Cumberland, had never heard that any one had said a pistol had been seen in McKaig's hand at the time of the shooting, until since he came to Frederick. John Hipp did not see them till after the first shot. He states that he turned around and saw McKaig running and Black after him, and says he saw a revolver in the hand of each, but his whole description of the affair is so contradictory in itself, and of all the others who witnessed it, as to destroy its credibility.

I submit whether the same is not also the effect of the statements of the two colored witnesses, Davis and Garney. They both testify that at the moment of the first shot, each was standing at Ryan's corner, yet neither saw the other, and neither was seen by the two or three respectable witnesses who came out of

Ryans's store instantly on hearing the first shot. Garney says he heard a pistol shot, looked up and saw Black and McKaig, and both had a pistol. Then he does not profess to have seen a pistol in McKaig's hand before the first shot. Davis says after McKaig passed him, he saw a pistol shining out of a holster; did not see the first fire, and does not state that he saw a pistol in McKaig's hand at all. The lad, Clark, states that he was in Medore's shop. Now, this Medore is the witness who testified that Clark was with him in his shop; after the first shot both turned and looked out of the window; and yet how totally different is the statement of the two; Medore says he saw a pistol in McKaig's hand; Clark says he did not, but saw a pistol fall, but does not know from whom. Now, I appeal to you again, has any witness testified that, before the first mortal wound was inflicted, he saw a pistol in McKaig's hand, much less presented at Black? A pistol was seen on the ground, and two most respectable witnesses say they saw it fall from McKaig's person, as his dead body was being lifted up for removal into the office.

It is true McKaig had two pistols on his person, but it is submitted whether the result of the whole testimony does not force conviction upon your minds that McKaig was taken utterly by surprise when he received the first mortal bullet into his body, and threw up his empty hands, retreating from his assailant in dying agony, and pursued by the prisoner with repeated shots and murderous intent until his lifeless form lay prostrate in the street! Did the circumstances given in evidence excite a sudden phrenzy and transport of passion? Or did they produce in his mind an intense hate, a fixed purpose of revenge, a deliberate determination to seek his victim on that morning, and take his life? Was it self-defense or willful, deliberate, and premeditated murder? In contradiction of both these afterthought theories I call your attention to the evidence of one who best of all on earth *knew* the motives and purposes of the prisoner's heart, and his reason for killing McKaig.

I have repeated to you the undisputed law, that upon the actual killing being proved the law presumes that it was willful; that is, intentional, and that it was done with malice aforethought; that it was purposely done is not denied.

I have reviewed the evidence adduced to prove the inconsistent defenses of sudden phrenzy of passion and of self-defense. If either of them were true, who so well knew their truth as the prisoner himself? If he had walked off in silence he would have left room for argument upon the circumstances, and the probable motives which actuated him, to rebut the presumption of deliberate malice. If he had seen a pistol in McKaig's hand, and in apprehension of imminent danger to his own life, and in the *bona fide* belief that the instant killing of McKaig was necessary to save his own life, what would have been the natural, irrepressible outburst from his heart and lips to those around him who had witnessed the homicide? Would he not instantly have exclaimed, "he drew his pistol, I got the first shot; I was compelled to take his life to save my own. I knew he was a deadly shot, and I killed him in self-defense." If this had been true, is it possible that he should not

have uttered words to that effect? Then, if he did not, it was not true; and if not true at the moment it is not true now, and no ingenuity or eloquence can make it true. Did he make any such utterance? Did he assign any such reason for his act? Did he walk off in silence, and leave room for conflicting witnesses and ingenious theories? No, no! gentlemen. I am sure you must have seared into your memories the manner of their utterance, and those terrible words with which he closed that awful scene. Leaving the prostrate body of the dead McKaig, he walked back to the pavement where the tragedy commenced, levelling the pistol which had done the murderous work toward the body, and those who were about to remove it from the street, he said to the dead body, "That is what you got for ruining my sister, and trying to send father to the penitentiary, and I have another shot for any d——d scoundrel who says I have done wrong!" Is that the language of self-defense? And these words were admitted in evidence by the Court, at the instance of the counsel for the prisoner, as being uttered so instantly after the act as to form a part of it. Then the act of killing and the declaration are one. The words explain the act. They avow and justify it for the reasons assigned; they explain that looking into the window of the foundry office; the looking across the bridge; the half-hour's waiting about Humbird's and Cragin's corners and Shriver's store, and the instant starting toward McKaig as soon as he was seen to cross the bridge. They explain why that right hand was kept in the overcoat pocket. It is shown that it held a deadly, self-cocking pistol for a deadly purpose; they explain the sudden stride which brought him side by side with his victim, and the instant shot which sent the deadly bullet into his vitals, and the fell purpose of revenge which followed, with repeated shots, the wounded and dying man until he lay a motionless corpse; they explain all; they were the outburst of the pent up malice; they were the result of the night's meditations. The deed was done. Whether McKaig was innocent or guilty of his sister's ruin, his lips are now sealed in the silence of death.

Another thing was certain: he could not appear as a witness in court to send his father to the penitentiary. These two purposes were accomplished. A young husband and father, and one of the most prominent and respected young men of his county, had been slain without a word of warning. The law had been set at defiance; the peace, government, and dignity of the State had been outraged, but even this was not enough; the freedom of speech is to be silenced by the same manner; a shot is reserved for any one who should dare to pronounce the killing of McKaig a wrong; and this is self-defense!

But, gentlemen, I will detain you no longer upon the facts of this case; but as jurors, as citizens, as fathers, as brothers, I beg you to consider the consequences of allowing such an outrage to go unpunished. I need not say that no man can go beyond me in abhorrence of a seducer. I agree that there have been and may be cases where the enormity of the crime is greater than human nature can bear. I agree that where the fact is certain, and a father or brother, upon its discovery, meets and kills the seducer

in a sudden transport of passion and without malice, the offense is manslaughter and not murder. I agree that there is in our State no adequate law for the punishment of seduction; but that is no reason why you should undertake to make a law upon that subject, or refuse to execute the law that does exist to punish manslaughter and murder; and especially it is no reason why you should listen to an appeal in this case to make a law to gratify what is called "the moral sentiment of the civilized world," (about a matter of fact of which you have not a particle of evidence,) whereby you are to justify a man in assuming to be judge in his own, or his sister's, or father's case, and to execute, by his own hand, one of the highest prerogatives of human government—that of taking human life. To do this is to unsettle all the foundations of civil society, to abolish government, and resolve society into a state of nature.

If what you are told you may do was put into the form of law, there is no court in the civilized world, presided over by judges like Lord Hobart or Lord Coke, which would not pronounce it null and void, for, when it is proposed in the form of law, its violation of common sense, common justice, and natural equity becomes palpable. Enacted into the form of law it would read thus:

"Every person, upon being informed that his wife, daughter, or sister has been seduced into criminal intercourse with any man, shall be, and he is hereby, constituted grand jury, court, petit jury, sheriff, and executioner, fully authorized and empowered upon such information as he may choose to believe, to condemn, and at his convience, and by any means or instrument or weapon of death he may choose, to put such man to death without a moment's notice or warning, and this shall be deemed and held justifiable homicide."

But I suppose such a law could not stop there. To prevent or remedy the abuse of such license it would be necessary to add a provision to this effect:

"But if any father or brother, or relative of the person slain, shall be informed and believe that such person was innocent of such charge, or that he had been the victim of an artful and lustful woman, such father, brother, or other relative shall have like power and authority to kill the slayer."

It certainly requires no argument to prove that if such laws had been passed by any legislature, and introduced as law before a court presided over by judges like Hobart and Coke, they would be pronunced null and void. I adverted a few days ago to decisions wherein these judges held acts of Parliament void which were against natural equity, and to the admiration excited by their intrepidity and powerful sense of justice in holding that acts of Parliament are controlled by the common law, which adjudges them void when against common right and reason. And the very example given is an attempt to make a man a judge in his own case.

It is true the moral sentiment of the civilized world justly execrates the wanton destroyer of female virtue and domestic happiness. But let the moral sentiment and the legislative wisdom of

the civilized world devise and enact a mode of trial whereby a man may be proved guilty before his lips are sealed in death. When so tried and found guilty, whether the penalty be death or the penitentiary for life, let the civilized world be notified by legislative enactment.

Until that is done the law must be executed as it stands, and evidence introduced to show provocation, great or small, be confined to its well-known legal limits. At least, such is the view that impresses itself upon my mind, and which, in addition to what was so well said and strongly argued by my young friend, the State's attorney, I have felt it to be my duty to suggest for your consideration.

I shall leave the closing argument on behalf of the State to the able and experienced counsel who is associated with us in this prosecution. And thanking you for the patient attention with which you have honored me, I leave the case, the prisoner, and the consequences, in your hands. I have no doubt you will honestly discharge your duty to the best of your judgment.

ARGUMENT

OF

FRED. J. NELSON, Esq.

MAY IT PLEASE THE COURT AND GENTLEMEN OF THE JURY, the learned gentlemen with whom I have the honor of being associated in the trial of this case have assigned to me the duty of opening the defense of this youthful prisoner at the bar. I have tried many cases, but yet it would be affectation on my part were I to pretend that I approach this case without more than ordinary *gravity*. The magnitude of the issue involved—the issue of life or death—the condition of the prisoner, who, after many hard struggles with the cold and selfish world, is just entering the threshold of an honorable and successful career; his youth, his intelligence, his spotless character, without blemish, without a stain, the hushed silence of this vast multitude, the presence here of this stricken father, the tears of this sorrowing mother, who, in the language of her heart's own deep pathos, is "Oh, so desolate!" the consciousness of my own weakness and inability—are not all these, gentlemen, sufficient to oppress, nay, to overwhelm one of far more power than can even be aspired to by the humble advocate who has the honor of addressing you? Yet, gentlemen, amidst the weight of this responsibility, I have one hope, one consolation, one encouragement—that this case is to be tried by an American jury. This one fact is the star that will guide the frail bark of this youthful prisoner through the mad waves of malice and revenge that are surging around him, into the haven of rest and security. Let me pause one moment here, to take a cursory glance at the character of this prosecution. Why are we here at all? This cause originated in Alleghany county. Why is it tried before a jury of Frederick county? It is the privilege of the prisoner to be tried where the alleged offense is said to have taken place. It is his privilege, if he sees fit, to withdraw his trial from that place and submit it to another tribunal. Gentlemen, this case was almost on trial once before. Ten jurors were sworn to "well and truly try the issue, and a true deliverance make" in this very cause. At that point who stepped in? The State. (Why, gentlemen, those who are prosecuting here are powerful, rich, and strong.) Their influence pervades all the hills of the Alleghaney's. Is it possible that a fair and impartial trial in Alleghany could not be obtained among the honest yeomen who constitute the jurors of that county? Gentlemen, need I pause to answer? Does not the question itself suggest the proper reply to your own minds? Under the constitution of Maryland, in its Bill of Rights, is a declaration that ought to have secured to this young man a trial where he is best known; where he has been reared

from infancy up to young manhood; where his incomings and outgoings are known to everybody, and where there could not be supposed to be any prejudices surrounding him, *pro* or *con*. There, in the midst of the people who, it has been said in this cause, were outraged by this transaction, he had elected to cast his fortunes, and to abide the issue. You have been told, *outside of the evidence*, and in a cause *involving a human life*, that all Cumberland was greatly incensed; that the public heart beat with indignation at the outrage that was perpetrated upon one of its citizens. If so, was there any danger that this young man would have received special favor from that community? If so, was not the State in a condition to receive, not only a fair and impartial trial, but was it not invited to a contest, with all these predilictions thus formed in the mind of that community against the prisoner at the bar?

"The trial of facts," says the constitution of your own State, "where they arise, is one of the greatest securities of the lives, liberties, and estates of the people." This is not the language of mere declamation. It was not incorporated into this constitution by the convention—the learned attorney general himself penning this very article, as one of the committee on the Bill of Rights—as a rhetorical flourish. He did not write it there as mere empty sentiment. It had been the usage in the times gone by, through which our revolutionary fathers struggled, to take a prisoner from his place of residence, where the facts surrounding the particular transaction were well known; from among those who knew his character and associations, and carry him off to distant parts for the purpose of having him tried among strangers. This was the outrage, this was the violation of the sacred privileges, of the inalienable rights of the individual citizen that the constitution of Maryland put its seal of condemnation upon; this is the reason why, through its committee man, the attorney general, as though it were written in letters of living light, it caused it to be proclaimed "that the trial of facts where they arise,"—not elsewhere—"is one of the greatest securities of the lives, liberties, and estates of the people."

I might go so far, without risking my reputation as a lawyer, as to declare that the removal of this cause by the State is in direct contravention of the spirit of its fundamental Bill of Rights. Why was this prisoner at the bar dragged from his home down into the midst of strangers, where he is unknown; where witnesses are unknown; where not a friendly countenance greets him from the jury-box? Was it in order that he might have none of those very surroundings which the law regards as his sacred right—the "greatest security of the lives, liberties, and estates of the people?" I will not dwell further, gentlemen of the jury, on this question, though it is one that falls properly within your province to answer. But, before I enter into the argument proper of this case, let me glance at some of the views put forth by the learned attorney general of the State, and let me direct your minds somewhat to the character of this prosecution, as is illustrated thereby, that we may have the full benefit of the impartiality of the one, and a proper appreciation of the temper of the other. What is the duty of the State in presenting a prisoner for trial before a jury? One man has been slain. He was a citizen of the State. Another man is charged with that slaying. He is also a citizen of the State. Their lives are equally dear to the State, the one as the other. The State wills the death of no man. The State wills to punish no man;

and when one of her citizens is, therefore, brought to a trial, she surrounds him with all those immunities, all those privileges which insure him a fair, impartial investigation. To this end she has selected her officers—the attorney general, who is the prosecuting attorney for all the State, and the special attorney for this county. She says to them, when she clothes them with this attribute of her power, prosecute, not *persecute;* see that the State suffers no detriment; but also see that the prisoner at the bar receives a fair, impartial trial. She says to them, do your whole duty as public officers, but take not the life of a citizen by the suppression of the truth, or by testimony that is illegitimate. I say it is judicial murder for a prosecuting attorney to put one tittle of evidence before the jury not warranted by the law, when that tittle may send to eternity a prisoner at the bar, just as much as it would be judicial murder in that tribunal, the Court, to sentence a man to be hanged who was not convicted of a capital crime. Again, gentlemen, it is of the same character of crime to comment on facts, to the injury of the prisoner, which are not in evidence. I announce this as a principle of morals; I announce it as a principle of law.

Now, let us apply this principle as we go along. The learned attorney general opens a very able and very interesting address by deprecating an appeal to your sympathies. He told you that you must steel your hearts; that you must make of yourselves blocks of wood, lumps of stone and iron. Gentlemen of the jury, why have we the institution of a trial by jury? Let me ask you why am I not constituted a juror? Why are not the members of this bar constituted jurors? Why is not that tribunal, the judges, learned in the law, constituted the jury, the triers of your fellow-citizens when they are put upon trial for a criminal charge? Why? For this reason, and this alone—and this is the answer to the deprecation we have heard here—because you come from the body of the people; because our profession, in a manner, cuts us off from the common feeling of the people upon these subjects; because our minds are educated in a particular line, and, I am sorry to say, too often in a school of very narrow, technical jurisprudence. Therefore, for the purpose of avoiding this very evil of education, for the purpose of casting to the winds this mere *technical* hanging of a man, the law selects from the body of the people those whose hearts are, in a peculiar manner, in sympathy with their fellow-citizen upon all subjects; who know his mode of thought; who can appreciate his motives; who can dive down into and fathom, and feel with his feeling. Because, for the very reason the very opposite to that given by the learned attorney for the State; because you are *not* blocks of stone; because you are not steel and iron, but living, quivering flesh and blood, like the prisoner on trial. For that reason, gentlemen of the jury, you are selected. But this deprecation of sympathy, of course, was perfectly fair upon the part of the learned attorney general for the State. Was it? Mind, I charge him here with no unfair motive, but I do say that he has been carried away by the zeal of the prosecutor. Honorable, learned, dignified, religious, conscientious, as I know him to be, yet he has been carried away by the mere zeal of the advocate who struggles for victory. Why did he, after deprecating an appeal to your sympathies, paint a picture to you that was enough to awaken sympathy in every bosom. Did he not paint the family of the deceased here before you in all the habiliments

of woe? Did he not invite your pity for the sorrowing father, your sympathy for the mourning brothers, your tears for the lamenting wife? Were you not taken to the home of the husbandless mother, and were you not told that in every passing breeze there was a wail from her widowed bosom, "Where, where is my husband?" Is not that an appeal for your sympathy? Was it wrong in the defense? Then, is it right in the prosecution? I ask you, was this deprecation of our appeals to your sympathy by the attorney general genuine and sincere, or was it not one of those rhetorical flourishes which, while it might serve to round the period of the orator, might put in jeopardy the safety of an innocent man?

Gentlemen, let me pause here one moment, to make a single remark. I believe, if I have one characteristic above another, it is that of kindliness of feeling. I regret—I regret for my own sake (I am selfish enough to say so) because it adds to the painfulness of my task. I regret to find the father and the other members of the family of the deceased attending upon this trial, because I may be compelled, in the course of the remarks that I propose to submit to you, to say something that will cause a chord of anguish to vibrate there; and, as there is a God above me, to judge us all, it makes my heart bleed to think that such is my necessity. I know not, gentlemen, why they are here. If the spirit of W. W. McKaig has gone to a blissful home beyond the stars, as I hope it has; if it is there in communion with that Saviour who died for us all, think you it will look down with pleasure upon the sacrifice of another young life. Nay, would it not rather, catching the inspiration of the presence in which it stands, exclaim, in tones of sorrow, "Rather let the sinner live and repent." Can it be that the blood of this young man will cause the flowers to bloom more sweetly upon this new-made grave, teach bereavement to pass more lightly over the widowed heart, or heal one bleeding wound of the doting father?

I pass, gentlemen, from this theme, for it is equally painful to me as it must be to you. I come now to another point in the attorney general's remarks. With all the earnestness that belongs to him he detailed to you the shooting, by the father of the prisoner at the bar, of the deceased McKaig. Why was this? It was for the purpose of producing this impression: That if the shooting by the father occurred some two months before the shooting by young Black, then young Black must have known the why and the wherefore of that shooting. Now, that is an important point, in the estimation of the learned prosecution. It is part of the theory of the defense that young Black killed McKaig in a phrenzied condition of mind, occasioned by learning of his sister's dishonor, the day before the killing. They say if we can show that the shooting, by old Mr. Black, which was for the same cause, occurred two weeks or two months before the shooting by young Black's, they may whistle down the wind with their excuses when they tell this jury that he was unacquainted with the condition of his sister until the night before the killing. Away then goes the theory of sudden phrenzy. That is the idea. Gentlemen, upon that may hang the life of this prisoner. Now, then, what are we to say when we find this very testimony, intended for the purpose of establishing an inference that may hang this man, the fabrication of the brain of attorneys, outside of the evidence, with not one whisper of truth in it? Gentlemen, the learned attorney for the State is only excusable because he

was not here when the testimony was put before this court, and ruled out. If he had been present when it was sought to put in that testimony, and knew of its being ruled out, so help me God, I would brand him as an attempted murderer. I spare no man who attempts to take the life of another by illegitimate testimony or by forcing inferences upon the jury which have been excluded by the honorable bench. Is this line of prosecution, then, legitimate? I have two reasons why I refer to these things. One is to show you how easily the earnestness, the overleaping anxiety that actuates this prosecution in the pursuit of the prisoner at the bar may cloud and warp the judgment. I have another reason. If the officer of the law, he who is acting under the sanction of his official oath, can so far allow that official duty to be clouded, overcast, by the zeal of his own advocacy, how much more have we not to fear from another of the learned counsel for the State whose zeal and ingenuity may be inflamed and sharpened by the stimulating influence of private reward? For we have here not only all the official sanction to this prosecution of the highest legal officer of the State and of the regular attorney of the county, but we have here a private prosecutor, whose appointment, it is said, has been confirmed by the court. I know not who employs these additional supernumeraries, or who appoints them, or who confirms them, especially the learned counsel who is put here, with all his ingenuity, all his long criminal practice, to wind up this prosecution. I do not know, nor do I care. But I do know that, in another case of murder tried this term, there was neither appointment nor confirmation; but the learned State's attorney for the county was left to his own resources. I am not yet done with the mode in which this prosecution has been conducted by the learned attorney general of the State. Do you remember his detail of the conversation that occurred between Mr. Lowndes and the mother of this prisoner? He became eloquent upon that. He told you that, in that conversation, when Mr. Lowndes was insisting that his sister should return, for the purpose of being a witness in his father's case, that Mrs. Black declined to have her return for that purpose. He told you that she had declared her willingness to sacrifice her own life, nay, she would first see her husband rot in the dungeons of the penitentiary. "And all for what?" he asked. The learned attorney general found a reason. Because she knew that the charge of seduction was false. She was afraid to have her daughter confront the alleged seducer. He could give no higher reason for this mother's refusal to have her daughter brought here into the witness box. He could dive no deeper into the female heart and discover the true reason. With as kindly a disposition as the learned attorney general is known to possess, I did not expect so ungenerous a construction of an agonized mother's heart. But that is not all; that is the least. He has built upon that an argument, without the establishment of which this whole prosecution falls; for, from that conversation, he has built up the motive of the crime, and the only motive, as I will endeavor to show you, gentlemen, when I come to that branch of the case.

Now, follow me closely, and tell me if I am not right when I say that this prosecution is carried on with an over-wrought zeal, and that that over-wrought zeal is supplying facts where the evidence omits to supply them. What does he tell you? He tells you that young Black shot McKaig. Why? For the purpose of getting rid of him as a witness in the cause. Not in this case, but in the case against his father. Get

rid of him! How? He was present when his mother refused to have his sister come home. The attorney general says that his object in getting rid of McKaig was in order that his sister might stand uncontradicted, and thus clear the father. Gentlemen, before you can arrive at that conclusion, what is necessary? It is necessary for you to find this fact, that young Black knew it; that it had been communicated to him that his sister was coming home. Now, did he know that fact? The attorney general tells you that the mother refused, upon any consideration, to have her daughter return, and that young Black heard her so refuse. Now, when and how did he learn that his sister was to return? If it is not shown in the evidence that he did learn it, then these gentlemen have overstepped the bounds of legitimate prosecution when they undertake to infer it. I announce as law, in the presence of the learned gentlemen, that you can infer no fact for the purpose of arriving at a conclusion, but you must prove every step that brings you toward that conclusion. Nothing must be inferred, because, if true, it would account for the facts. Can you arrive at the motive, attributed to young Black by the learned attorney for the State, without inferring that young Black knew that his sister was to return home? If, when you go to your jury box, one juror suggests to the other, "Why, of course he knew it; the learned attorney for the State has shown that he knew it," answer him thus: "By the irresistible power of law and logic, find me in the evidence the fact that the sister's return was communicated to young Black." If you do not so find it it is not a fact in the cause. What I am now saying, gentlemen, is to put you on your guard against the style of this prosecution; and to show you that with all their professions of sympathy, and with all their declarations of fairness and impartiality, these gentlemen, prosecutors, have allowed their judgment to be run away with by their zeal for their cause.

There is another assumption of the learned gentleman that might as well be noted here, because he deemed it of sufficient importance to be put to this jury. Gentlemen, if a witness had been put on that stand and asked this question: "Did you ever have a conversation with William W. McKaig in his life time?" and he should reply, "yes," and he should be further asked, "did you ever hear William W. McKaig deny that he was the seducer of Harry Black's sister?" he would be stopped, and without argument, the learned Court would rule the answer inadmissible. That is a clear proposition. Now, if that be so, if it be true that it would be ruled out as incompetent evidence, is it admissible to put that supposed fact in, in any way? If it is not competent to have that fact spoken to, by a man who is under oath to speak the truth, would it be legitimate or competent to put it in from the mouth of an unsworn attorney in the case? Clearly not. Yet, that fact has been laid before you. Why was it done? We must presume that the gentleman was in earnest. It was done for the purpose of putting before the jury a supposed fact which could not be put in before them in the legitimate course of the examination of witnesses. He tells you that William W. McKaig never did seduce this girl. How does he know it? Did he learn it in this cause or out of this cause? If in the cause, what witness told him so? Give us the evidence, Mr. Attorney General. If out of the cause, let me ask, does the State employ, appoint, or confirm its

prosecuting officers to convict a man of a capital offense by statements made to them by irresponsible parties not sworn as witnesses? Is this the kind of prosecution to deal with human life? I may reply to this unsworn assertion, however, by saying, gentlemen of the jury, that this testimony of seduction which we tried to introduce, and *which was fought against a whole day* by the counsel for the State was ruled out by the Court. If we were allowed to go into that testimony we would show you the seduction. We would open up a story here that would harrow your souls, and make each particular hair stand on end. We would introduce the seducer into this house; we would show you how he carried her from the hearthstone; aye, how he tracked her after his own marriage with an honorable woman, tracked her to the city of Baltimore, and in the public hotel prostituted her to his lust. I say all this is not in evidence, but it is a legitimate reply to the non-evidence testimony given by the unsworn officer of the State. This is a part of the paraphanalia of this prosecution. This is the style of argument made, and in a case where the life of a human being may depend upon the impression made upon your minds by the eloquence of counsel.

Now, gentlemen, I must pass from the learned attorney general of the State; turn from the line of argument of the prosecutor, to the prosecution itself; to the facts and circumstance of this case as they realy are; as they are developed by the testimony and not as they exist in imagination of counsel or are painted by the overwrought zeal of the advocate.

On the 17th day of October, 1870, there occurred in the streets of Cumberland, a collision between two young gentlemen, each a member of a highly respectable family; one a wealthy family; the other a family in ordinary—I was about to say comfortable circumstances, but it would be more in accordance, perhaps, with the truth, to say, uncomfortable circumstances. In that collision one of the young men lost his life; and the inquiry here is, how that life was lost. It is charged in the indictment that the taking of that life was a malicious, premeditated murder. William W. McKaig was the slain man; Harry Crawford Black was the slayer. These facts are admitted. Black is put on trial upon that indictment; to this indictment the prisoner has pleaded not guilty, and has set up two defenses—self-defense and a phrenzied condition of mind at the time of the killing.

Now, let us take the facts, and see whether or not this shooting was done in self-defense. In the first place, the State must prove what it alleges. It will not do to prove the killing only, but they must prove that it was a malicious killing, and with malice aforethought. We will confine ourselves for the present to one branch of this inquiry alone, and see whether from the facts there developed, it is possible for this jury to come to the conclusion sought by the State and necessary to be proven by it. Who fired the first shot? Who was the first aggressor? How do we get at this fact? Now, look at it, gentlemen, in the light of common reason. You are put here because you are supposed to be best able to judge of the facts that ordinarily surround human transactions. Where do you find who fired the first shot? There are but two witnesses in chief for the State; you do not find it from the testimony of Dr.

Healy, and you do not find it from the testimony of Mr. Gross; but it is said that Dr. Healy witnessed the first shot.

Mr. SYESTER. No, sir; Dr. Healy did not see the first shot.

Mr. NELSON. I am corrected by my colleague, who reminds me that Dr. Healy did not see the first shot. This makes this view of the case still stronger. If neither Dr. Healy nor Mr. Gross witnessed it, who, then, did? No one. Every witness who has been examined testifies that the first shot was fired, and then all that was seen was observed after that first shot.

Now, William W. McKaig was killed, and by Black; that is true. But is it a fair, logical deduction from that fact that, because he was killed by Black, therefore Black was the first aggressor; that he fired the first shot. That would be a most impotent conclusion, gentlemen, because we frequently see the first assailant get the worse of the encounter. How, then, I ask again, do you arrive at the fact of who was the first assailant? If you have no witness here to prove that fact distinctly, how are you to get at it, save and except by the illogical inference that because McKaig was killed and Black killed him, that, therefore, Black was the first assailant. But if we admit that Black did fire the first shot, still this does not suffice, but only brings us to this inquiry, did McKaig have in his hands at the time of that encounter, a pistol? Let us examine this matter, gentlemen; even upon its probabilities alone. Dr. Healy says, "No, McKaig had no pistol." Mr. Gross says, "No, he had no pistol." In other words, each of these gentlemen say this: "I did not see a pistol." That is all that they could mean, when they say that he had no pistol.

We are now upon the probabilities. Admit that Healy and Gross—*two* men—did not see the pistol; there are *six* men who testify that they did see a pistol in the hands of the deceased. First, Charles Medore; he was standing in the window. It is not pretended that he had not just as fair a view, and just as good an opportunity as Dr. Healy of observing all that was going on. He stands upon an equality with Healy. If there is one thing in favor of one or the other, it would be the youthful vision of Mr. Medore. He is just as honest a man as Dr. Healy; he stands, in the city of Cumberland, in his sphere in life, quite as honorably as Dr. Healy in his sphere of life; he exhibited no anxiety on this point; if a partisan he failed to show it, and in this particular he will compare most favorably with Dr. Healy. Yet, he saw the transaction in and about the same time that Healy saw it. Healy did not see the pistol, Medore did; who is to be believed? Jurors sometimes in a civil case, where the proof is about evenly balanced, will toss up a penny, and decide the case by heads or tails, and in such a case parties may be willing to risk a verdict in that way. But in a criminal case where the testimony is nearly evenly balanced; where both witnesses are equally worthy of credit, not only are you not at liberty to toss the penny to decide the question, but you are bound under your oath, as laid down even in the musty books of the prosecution, to give your verdict in behalf of the prisoner, upon the doubt that is engendered under such circumstances.

Go another step—Charles Clark saw this matter. He was in Medore's store; does he contradict him? It will not do to reflect upon Charles Clark, because Clark comes here, signed, sealed, and

endorsed "good," by the prosecution. They summoned him here, and accredited him to this jury as worthy of all belief. But aside from the credit which their summons gives him, he bore upon his front the simple truth of childhood's years. And he stood in that box, and with a simple, unsophisticated face of innocence, told you the truth, as it was in him. He said he saw the pistol. Why should he say so, if it were not true? Has he been bought? Men do not buy children when they attempt to make up a defense by the force of gold. They buy astute, cunning, shrewd scoundrels. You do not go and take the young sprouts that are as yet unlearned in the iniquities of the world, and are apt to trip and fail in their first efforts at villainy.

Was this boy mistaken? Wherefore mistaken more than Dr. Healy? Was he of defective vision? Fully would he compare with Dr. Healy in that particular. Is he an honest boy? Surely his character stands as high in his sphere as Dr. Healy's does in his sphere. Why, they both have sworn to the truth as it was in each of them. Both may go this instant before the Throne of all Truth, though they have given contradictory testimony, and yet be equally pure in the presence of the Deity. Why? Because they have sworn to what they supposed to be true. It is all relatively true. But you, gentlemen, are to find positive, not relative truth, and that beyond a reasonable doubt. How are you to do so from this testimony without the power of Omniscience? Wolf swore to the same thing.

An effort has been made to break down the testimony of Wolf, Why? Because it is said by one of the attorneys of the State, that while he was testifying he stood with large drops of sweat forcing themselves down his cheeks. Gentlemen, it is not every man who has sufficient nerve to appear upon the witness stand unmoved. No damaging inference can be drawn from that; no inference, or if inference must be drawn, it is more frequently one of honesty and truth than it is of hardihood and villainy. Wolf saw the pistol; his observation was just as unobstructed as Dr. Healy's. Dr. Healy called his attention to these two approaching young men; and he observed them; he gives his statement of facts, and Dr. Healy gives his. Who is right, and who is wrong? We care not which is really right, which really wrong; only give us this view, it is all we ask, that they are both honest, swearing to what each supposes that he saw, or did not see; that is all we ask. Who will decide between them beyond a reasonable doubt of deciding erroneously?

William Wolf could be impeached if he was swearing to that which was false; he is open to impeachment. We would like to have seen the effort made to impeach him; we would have made the fortune of the telegraph by summoning the city of Cumberland here to vindicate his character. Garner saw the pistol in the hands of McKaig. There are six witnesses who saw it; Dr. Humelshine saw something fall near the curb which he supposed to be a pistol. Now here, are all of these witnesses, Medore, Clark, Wolf, Hipp, Garner, and Dr. Humelshine, every one of them swearing to the pistol either in the actual possession, in the right hand of McKaig, or falling from his hand.

This is the great overshadowing fact in this branch of the case. What now are you to do? You are to find the malicious shooting, if it exists, and discard the theory of self-defense; you are to find it upon a legal certainty; that is, without any reasonable, rational doubt. Can you find it under the circumstances of this testimony without doing—what? Suppose two witnesses testify to seeing a pistol, and two testify to not seeing it. That is tolerably equal balance. But in order to reach that position, even, you must convict of perjury four others. Can you do it without this? Are you prepared to find from the evidence that these four men—select either four you please—that these four men are perjured? Be it so; then, at least, you have got two honest men left standing equally with the two upon the part of the prosecution; now, will you give credence to the prosecutor's two witnesses, and not to the prisoner's? Why? Do so; if you think it right, do so. But let us have the reason why; and let that reason satisfy your consciences that it is what is meant by the law when it declares that the probabilities shall be given in favor of the accused. It won't do to say with Dr. Healy, "nobody ever heard of this self-defense until your came into the court-house." It is not true; it is false; as other things in this case are false. The public newspapers in Cumberland proclaimed the fact that a pistol had been found in the street; but it was not known to whom that pistol belonged.

Mr. WHITNEY. Have you the paper to refer to?

Mr. NELSON. I think I have (reaching toward the table;) here it is. Mr. Nelson then read from the paper, the testimony before the coroner's jury, as to the finding of a pistol in the street.

All I adduce this for is that I may be able to denounce the statement which has been made, and may be again, that this plea of self-defense is a gotten-up, or pretended plea, as untrue. The facts of this case are the foundation of this defense, and we have all along contemplated showing to this jury, and we think we have done so successfully, that this defense is a good one. Why, gentlemen, what are we talking about? Suppose McKaig were on trial here for his life instead of Harry Black, what evidence would you have to convict him? Six men seeing him with a pistol in his hand; only two swearing to seeing the pistol in Black's hand? Nay, Dr. Healy does not even swear to that, but expressly states that he saw a pistol in the hand of neither. Suppose McKaig were on trial here for his life for the murder of Black? What stronger case could you have against him? Why they would trace him from his home over the bridge; they would show him crossing the street at an unusual place; they would show him changing his cane from his right to his left hand; they would show him reaching back his hand as if for a pistol; they would place him upon the street; they would show the encounter; they would find a pistol on the street, the same as found here; they would have six witnesses to the pistol being in his hand; there would be a case as six to two stronger against William W. McKaig than there is against the young prisoner at the bar. And yet, with circumstances that would work this result, if the parties' places were changed, you are asked to find that, beyond a doubt, Harry Black, with malignity and depravity of heart, slew and killed William

W. McKaig; that the plea of self-defense is a subterfuge and a fraud. Are you satisfied of this fact? Is this the real conviction of your minds? Lord Chief Baron Macdonald says that "the jury must be satisfied that there is no rational mode of accounting for the circumstances, but upon the supposition that the prisoner is guilty."

And Mr. Baron Alderson said in another case with more complete exactness: "To enable the jury to bring in a verdict of guilty, it was necessary, not only that it should be a rational conviction, but that it should be the only rational conviction which those circumstances would enable them to draw."

Gentlemen, is it a rational conviction that McKaig was killed by Black maliciously and without provocation or self-defense? Is it a rational conviction from all these circumstances? If so, still it is not sufficient. In the language of Baron Alderson: "Not only must it be a rational conviction from all the circumstances, but it must be the only rational conviction that the mind can reach."

Tell me that the only rational conviction that the mind can reach from these circumstances is one of the guilt of the party when the circumstances disclose, upon the part of the State, two witnesses to the negative fact of not seeing a certain thing and upon the part of the defense six witnesses to an affirmative fact of seeing the same thing?

Now let me go a little further. Wills on Circumstantial Evidence, page 175, says: "If there be any reasonable doubt as to the reality of the connection of the circumstances of evidence, with the fact to be proved, or as to the completeness of the proof of the *corpus delicti*, or as to the proper conclusions to be drawn from the evidence, it is safer to err in acquitting than in convicting, or as the maxim is more popularly expressed, 'it is better that ten guilty persons should escape rather than one innocent man should suffer.'" This rule follows irresistibly as a deduction from the consideration of the numerous fallacies necessarily incidental to the formation of the judgment, on indirect evidence, and contingent probabilities, and from the impossibility in all cases of drawing the line between moral certainty and doubt. In questions of civil right the magistrate is obliged to decide according the greatest account of probability in favor of the one or the other of the litigant parties; but where life or liberty are in the balance, it is neither just nor necessary that the accused should be convicted or punished, but upon conclusive evidence, while it is certain that circumstantial evidence is frequently most convincing and satisfactory, "and this is circumstantial evidence." It must never be forgotten, as was remarked by that wise and upright magistrate, Sir Matthew Hale, that "persons really innocent may be entangled under such presumptions that many times carry very great probabilities of guilt," wherefore as he remarks "this kind of evidence must be very warily pressed."

How do you view this case? These humane judges tell us that we should be very careful how this testimony is to be pressed, and yet we find all the vigor of the State in the person of its highest legal officer, pressing with all the weight of his personal character, all the weight of his great intellect; we find the attorney for

the county, with all the vigor of his mind, and all the zeal of his heart; we find the private prosecutor urging with still more vigor this very testimony which these humane judges tell us should be very "warily pressed." "Many adverse appearances may be outweighed by a single favorable one, and all the probabilities of the case may not be before the jury." Such is the law of the land upon the subject of this class of testimony. I now put it to you, gentlemen, whether taking the evidence just as it is on this one subject of the shooting, whether you can, as rational men, come to the conclusion that this crime was committed beyond a rational doubt. That it is not only the conviction deducible from the circumstances, but that it is only conviction which a reasonable mind can reach. Let me ask: are all the probabilities of the case before the jury? Is there nothing suppressed? No circumstances kept back by the State capable of giving the jury light upon this most important subject? Now, bear with me one moment, and let us see if that be so. Answer me, gentlemen, why, in all fairness, why, in justice to the young life that is now in your keeping, in justice to the State to which the life of every citizen is dear, were not all the State's witnesses placed upon the stand to tell you not part, but the whole truth? Were the counsel afraid that something might drop from those witnesses unfavorable to the hopes of the prosecution? They summoned these witnesses—why were they not examined?

The State, as I have said, is chary of the lives of her citizens. It is a false theory that the State is any more the prosecutor of her people than their defender. In the morals of things, in the very theory of our free government she instructs her ministers to give the prisoner the benefit of all the evidence. Hence, I say that all who witnessed this transaction should have been placed on the stand. Was it done? Of all the multitude of people who were present upon that fatal occasion there were offered to you but two in chief. Can it be said, then, that all the probabilities of the case were before the jury? Why was the fact that McKaig had a pistol at all is studiously concealed by the prosecution until forced out by the cross-examination of the defense? Was it not a suppression of the material fact which the jury ought to know? Is this the fair investigation that the prisoner is entitled to, and that an honorable and just-minded jury will insist upon having before they will consent to lay that head upon the block and chop it off with the axe of the law? There have been suppressions of material evidence all through the case. There has been much said about McKaig's pistols. How many had he? One, two, or three? When the prisoner is charged with killing a man in the peace of the State, ought not the jury to know if the charge be true, or whether the man who was killed was not rather a walking battery? Do you observe but one thing, gentlemen of the jury, one pistol was found on the body of McKaig; one was picked up by Turney, near the curb, and one was found near where the body fell, and was picked up by a man other than Turney. Now, the prosecution must know the true history of these pistols. They seek to impress the jury with the belief that the pistol picked up by Turney, and the

one picked up by the other man near the body were one and the same. Would not Turney settle this question? And yet while he has been here all this time upon their summons, they close their case—in chief and in rebuttal—and refuse to call him. What faith can you have in a prosecution which acts thus? Why produce a witness to swear that he saw Turney pick up the pistol near the body? Might not this witness be mistaken? But Turney, the man whom they say picked up this pistol, could not be mistaken. Why did they not call him? The nervous old gentleman, Dr. Smith, saw the belt unbuckled by Mervin McKaig. Do you recollect that he was brought here to contradict Charles Medore on that subject. Now, mind, gentlemen, here is an old man whose mind is a perfect chaos of bewilderment, who was fluttering like a wounded bird amidst the excitement. He is brought here to prove what? That Charles Medore swore to a falsehood when he testified to the unbuttoning of this pistol belt by himself. Why, Charles Medore is just as honest as Dr. Smith. Upon what meat hath this our Cæsar fed, that he is brought here to put the stain of perjury upon an honest mechanic. No, sir! Why bring Dr. Smith at all, if Mr. Medore was to be contradicted? Where is Mervin McKaig? He has an interest in this matter. He sat here prompting this prosecution day in and day out. Here he has sat ready at any moment to contradict Medore if the fact were as Dr. Smith supposes. Instead of him, however, this fluttering old bird, with his nerves unstrung, is brought here to supply this fact; when the young, vigorous manhood of Mervin McKaig, the very man who, according to Dr. Smith, unbuckled the belt, left without his face being shown to this jury. There is a reason for it. It is the suppression of truth. A suppression of the truth for the purpose of taking human life. I do deprecate; I denounce it; and so do the law books, as I will take occasion to show to you, gentlemen. "In the endeavor to discover truth, no evidence should be excluded." I read from the great authority on this subject. Wills on Circumstantial Evidence, "in the endeavor to discover truth, no evidence should be excluded," and yet we have the evidence of Turney excluded. We have the evidence of the pistol excluded. We have the evidence of Mervin McKaig excluded.

It is a maxim of the law "that all things are presumed against the destroyer of evidence," and the suppresion or destruction of pertinent evidence is always therefore deemed a prejudicial circumstance of great weight. The destruction or the suppression of evidence is always considered a circumstance of great weight. Do you mark that? And yet, with this uncertainity surrounding this whole transaction, with the suppression of these three facts, which were well calculated to throw some light upon the merits of the case to the jury in reference to this matter; with all this you are asked to say that the conviction is so strong of guilt that it is the only conviction that a reasonable mind can draw. Is this all?

No! gentlemen of the jury, there is another suppresion of evidence. This case is full of quips and quirks. It is full of turnings and shiftings suggested by the paid ingenuity of counsel. Where are the pantaloons of this dying man? His coat was exhibited here to parade the holes made by the bullets. Where are the

pantaloons? Would they, too, tend to supply a link in this chain of testimony favorable to the prisoner? I ask you, gentlemen, is there a pistol holster in those pants? Is there a pocket here where a pistol might be carried as well as in the holster? What is the condition of that pocket? Is it sound or torn? Does it give evidence of a pistol having been drawn from it? or of some force having been exerted upon it? The pantaloons would have answered all these questions, and without reason—without any excuse for their suppression—they have been suppressed and we are left to conjecture where they might have supplied facts. Am I not right that this is not a prosecution of a character to commend itself to your confidence. Is there not a suppression of the truth? Are all the probabilities of the case before the jury? Are not the probabilities that are before the jury all in favor of the prisoner? Is there no doubt to satisfy a reasonable mind.

Now, let me come to another branch of this case. I beg you will not be wearied with me, for the obligation of duty is such that while I regret to weary, I cannot forget the discharge of that duty. Let us come then to another branch. Do you know, gentlemen, that before you can convict a man of willful and malicious murder, that you must show a motive for the killing? There must be a motive, a rational motive. There must be a motive commensurate with the act done. Now, that question of motive has so far been entirely kept out of view here, as I will show you in the very few remarks upon the subject that I propose to submit.

In the same book to which I have referred I read this:

"As an action without a motive would be an effect without a cause, and as the particulars of external situation and conduct will in general correctly denote the motive for a criminal action, the absence of all evidence of an inducing cause is reasonably regarded, where the fact is doubtful, as affording a strong presumption of innocence."

Now, what was the motive for this supposed murder? The learned attorney general says that it was not self-defense. Let us put that aside. He says that it was not frenzy of this boy's mind occasioned by the intelligence of his sister's seduction. Let us put that aside. Then, what was it? Is there any unkindly disposition shown by young Black toward McKaig? None. Has there ever been a single threat? Not one. What, then, I repeat, was the motive? Where is the cause for this effect? The attorney general gives one. Now, let us see. With all his knowledge of human nature, with all his astuteness of argument, with all his profundity of legal knowledge, he has from the depths of this case brought to light but one motive. It is fair to suppose, therefore, that this is the real motive which will be insisted on in this prosecution. What is this motive? I adverted to it a moment ago casually. The single motive—now, mind you, he has discarded the frenzy of the mind and self-defense. He has shown nothing looking toward personal revenge; no threat; no unkind or hostile feeling. The *single motive* is this: That young Black killed young McKaig to prevent him being a witness to break down the testimony of his

sister in the case against the father; that for the purpose of getting him out of the way he slew him. Only this and nothing more. Now, will you pardon me if I go over the line of argument I assumed a moment ago, to show you that before you can get at that motive you must find the fact—not the inference, but the *fact that young Black knew that his sister was to come back for that purpose;* not the inference, I repeat, upon the authority of the law books—"nothing must be inferred because, if true, it would account for the facts"—but the sworn, proved fact itself. Now, this very fact was ruled out by the Court when the prosecution sought to put it in. What, then, becomes of this motive? But, perhaps, you will hear the learned counsel as you heard them in their opening suggestions on this case, declaring "we have proved the killing, and we will rest upon the presumptions of the law. The killing proved, the presumption of malice follows from that killing." This line, you will observe, is an abandonment of the astute motive of the attorney general. No matter, let us test this *new* motive. The new motive, then, is that of a depraved and malignant heart, based upon the presumptions of the law.

Now, gentlemen, a presumption can never be used in any case save and except for the purpose of supplying the want of a fact, for if the fact is there then there is no place for presumption. You must presume that the prisoner at the bar is of a depraved and malignant disposition, and that from that depravity and from that malignity has followed the death of his victim. Is this true? Mind you, presumption is always capable of being rebutted in law. Is this true? Is Black of a depraved and malignant heart? Does not the whole course of this case rebut such presumption? Take him, gentlemen, from his first infancy; take him at his mother's knee, a prattling babe; from there go with him through the community as a boy; scan his character; see if you can find any of the traits that were attributed to Julian the Apostate—cruelty to the smaller animals of creation; the spiteful disposition toward his fellow mortals, and the malignity that would cause him to commit wrongs against his schoolmates. None at all. Go with him from his home into the army of the Confederate States; fighting, as he supposed, for a just cause. What do you find there? Charles Taylor tells you that he was well spoken of everywhere; that he maintained a good character, and good characters are the exception in the ranks of all armies. Go with him after the close of the struggle for the lost cause back again with him to his mother's home, and see him sharing there with her the pittance of his daily earnings. Where find you the malignity of his heart? Is he not kind to his father? Is not he a doting son, supporting, to the best of his ability, an impoverished mother? Is not he a fond brother to an only sister? Is he not kind to all who come within his range in that community? Yet you are to find that he was of a depraved and malignant heart. Follow him away from home again—out upon the broad prairies of the west. Find him seated at the desk of the accountant in the office of the honorable Mr. Orr. One year he was with him. Did he testify to any depravity; any badness of heart? No. But Mr. Orr comes here voluntarily to give his tribute to the prisoner at the bar of good gen

tlemanly conduct during the time that he was with him in the land of strangers. Trace him still further, even out upon the borders of the west, in the city of Omaha, from the fireside to the boundaries of our civilization; go with him down into the bowels of the earth, among the rude miners of Alleghany, was he not beloved there? Behold the women and children even now offering up prayers for his return to them. Everywhere you hear but one voice, and that a voice of commendation for the nobility and generosity of his nature, the kindness and gentleness of his disposition. Where, then, gentlemen, do you find that depraved and malignant heart which now forms the only motive for crime relied upon by the State? And without that, no other motive appearing, you cannot convict in this cause.

We have traced him now through all these stages of his career. In the place of hatred we find love; in the place of drunkenness, sobriety; in the place of ferocity, gentleness; in the place of meanness, generosity; in the place of malignancy and depravity, a life crowned with every virtue that can adorn the character of a spotless youth. Oh, virtue, thou art indeed sublime if this be thy opposite! How is it? We are now testing this proposition of a malignant and depraved heart in order to discover who in all probability was the aggressor in this matter. Let us test the other actor in this tragedy by the same rule by which we have tested the prisoner at the bar. We have seen who is Harry Crawford Black, let us inquire who was W. W. McKaig. He was the scion of an honorable, wealthy house; himself a young man of magnificent physique—handsome, intelligent, and possessed of all those fatal accomplishments that wrought his ruin. Was he not one well calculated to set on fire the female heart. As he enters the humble dwelling of this unfortunate family, an honored and a welcome guest, conciliating their good will, and day after day, perhaps night after night, insinuating himself into the affections of her who was the jewel of the household. Is it any wonder that he won her love? He was so gentle, so kind, so attentive; he smiled upon her, and received her smile again as though it were the very sunlight of his life.

Mr. BRENGLE. If your honor please, I desire to interrupt the gentleman. I must object to his arguing before the jury what is not in evidence in the cause. The gentlemen proceeds in this way: First, he describes the character of the traverser, then he goes on to say, "Let us now turn to the character of W. W. McKaig? Who was he? Handsome, and possessed of all these fatal accomplishments that would be apt to take possession of a young girl's heart; a constant and welcome visitor at the house of her family, and displaying the greatest devotion." We submit that that is not testimony in this case at all. In the first place, that there is not a particle of proof that has been produced showing that McKaig visited this girl's house, or that he was possessed of those fatal accomplishments that have been spoken of.

Mr. NELSON. I have a right to argue that as far as the question of seduction is concerned. It was a fact, so far as belief therein, impressed itself on the mind of the prisoner. We could not go into the truth or the untruth of the fact of seduction, but we

were allowed by the Court to show that it was a fact to him, and so communicated; and that from a belief in such fact certain things resulted.

Mr. WHITNEY. But the gentlemen has not confined himself to that.

Mr. NELSON. Will the gentleman please lay out a line of argument for me.

The COURT. An objection is made, and the question submitted to the Court. Whenever a question is presented to the Court, it is presented as a question of law, and of course it must be determined.

Mr. WHITNEY. I have made no objection, and neither did I intend to make any through the course of the argument. The State's attorney, however, has made an objection, and the objection goes to the point that he is speaking upon what there is no evidence whatever in the cause to sustain.

Now, if the gentleman who desires to speak upon the effect the communication would make upon the mind of the prisoner, that is another question; but when he states to this jury that if they had been allowed they would have done so and so, and would have proved so and so, it is not proper. He is going on to state that he visited this house, when there is not a particle of testimony in reference to that point. My brother Brengle has made the objection to the Court, and we insist upon that objection.

Mr. NELSON. Are we allowed to draw no inferences from the testimony, or are we bound to take up these notes and read this fact and that fact, and say at every step that it is a fact? Is the prosecution to lay out our line of argument? Have they not sufficiently succeeded in the object of their interruption, and may I not go on?

The COURT. Gentlemen, the Court does not think that upon the question now presented it can properly do more than say this: That we have decided that the fact of seduction as a fact has been excluded; that is to say, that testimony to prove the fact, that the fact was a fact, has been excluded. Of course, in that exclusion was involved of necessity the exclusion of testimony to prove that it was not a fact. A refusal of testimony on the one side of the question of necessity involves the exclusion of testimony on another side of the question. The Court thought their ruling was perfectly understood.

Now, as to the next item. The Court decides that the *subject* of seduction, if that can be understood as distinguishing it from the *fact* of seduction, that the subject of seduction only entered into the case to the extent of which it might be shown by the evidence that it entered into and operated on the mind of the prisoner; that is the clear ruling of the Court now.

Of course, argument ought to be confined to the evidence. Don't let us be misunderstood by this statement as being anything else than announcing the general proposition. That is all the Court can say. Arguments on both sides ought to be confined to the law and the evidence in the cause; and such deductions from the evidence in, pertaining to the issue involved as a matter of law, such deductions as are reasonably deducible from that evidence.

Any deduction to establish the particular view which the counsel may entertain, provided that view pertain to the issue in the cause as announced by the Court.

Mr. NELSON. I suppose, sir, that the object of the prosecution has been accomplished, which was, as I take it, to interrupt the thread of my remark. If that is of any advantage to them, gentlemen of the jury, why they are entitled to it, as they are to all the other matters that are thrown into this case.

I was making a line of remark that I regard as legitimate. I do not now understand the Court to say it was not a legitimate line of argument. I hold in my had a document that might well have impressed upon any man's mind certain convictions. I was endeavoring to show you, if not in the gradgrind manner in which the gentleman does things, yet in my own feeble manner the thoughts that must have coursed through the brain of this young man, and that frenzied him, and resulted in the commission of this deed. This letter shows the depraved heart.

[Mr. Nelson then read the letter, which appears in preceding pages of evidence.]

This letter, I say, shows the life-tie of intercourse between this man and this woman. It shows this. Read it for yourselves. I was showing how the man who could write this letter could win the love of this woman; that in his approaches there was nothing bold, nothing forward; oh, no! your genuine seducer is never this. He glides toward his prey; and, like the fabled serpent, charms into false security his poor, trembling victim. I say this letter shows that it was too late now for her to escape; he had won her all to himself; she was all his, heart and soul, mind and body; he had wound the delicate tendrils of her heart about him, and they clung to him as the ivy clings to the oak. I say this letter shows all this. She had forgotten all else in the world, all except him. He was the soul of her existence. Father, mother, brother, and home, all forgotten! Yes, and on whom had she bestowed all this affection? On one who was to use her for a moment for the gratification of his lusts, and then to fling her aside like a worthless garment. But, perhaps, he would marry her? What! William W. McKaig marry a prostitute? But he had made her what she was! True, but are not some men's wives and daughters made to feed the lust of such as he? Oh, shame! Call him from his grave; seat him by the side of the prisoner at the bar, tear open their bosoms, and expose their hearts to this jury, and tell me upon which is written depravity and malignity? Yea, by that test we will stand or fall; go free or be hanged. With those two hearts thus exposed before you, tell me, then, in which heart do you find malignity, in which do you find depravity?

That is not all this letter discloses; that is not all the record of the heart that has gone, that this letter exposes. It shows a criminal intimacy that had been going on for a long time. It shows that the writer of it was not afraid to use language of any kind to the woman he had wronged, but who loved him. He knew that a woman who loves, though wronged, is—

> Like a waxen image 'gainst a fire,
> Bears no impression of the thing she was.

The prisoner at the bar had a right to read this letter in that light, and if he be a man, as he is, if he be what he is represented in this case to be by the evidence, his heart must have burned, burned even to consumption, when he saw and appreciated what that letter itself suggests to any mind. And is the burning shame, the fierce phrenzy that must have overwhelmed and crazed his heart and brain, to be nick-named malignity and depravity?

But to return. Not only does this letter show the depravity of the writer in this criminal intimacy, but it shows that which is more damning still. It shows that the man who stood before God's altar, and pledged his troth to a virtuous woman, was willing to pollute her bed by the presence of a prostitute. Directions are given in that letter how to get in and out; how to loop the dress; how to conceal herself from the world while she played the harlot in his wife's bed-chamber. I say *here* is the evidence of the malignity which is sought to be fastened upon the young prisoner at the bar. It is said the letter is not his. Whoever says so charges General Resley with that which is not true, for General Resley says that it was and is his letter in his own proper handwriting. The attorney general tells you that no woman would have received such a letter without spurning the writer; that it is a forgery of the defense. This view may do credit to the purity of heart of the learned gentleman, but it is not complimentary to his knowledge of woman's heart.

> Knowest thou not yet, when love invades the soul,
> That all her faculties receive his chains;
> That reason gives her sceptre to his hand,
> Or only struggles to be more enslaved?

The gentleman says that its intrinsic evidence shows that it was written, not by the cultivated gentleman who ornamented society, but by a person of low, vulgar habits and tastes. You know why its intrinsic evidences are not those belonging to a highly cultivated gentleman. Why, it tells you itself. I told you, gentlemen, and I repeat it, that it gives me no pleasure to say these harsh things in the presence of the friends of this dead man. On my honor it does not, but the necessities of this case require that it shall be gone through, bleed whose heart may bleed. It shows why it contains inaccuracies in spelling; why it contains expressions that otherwise might not come from his lips—he was drunk! He says so. The letter discloses the fact that he had been down town in a debauch, that he was at the gambling table, and that he continued drinking liquor until he got too much. The letter itself says so, and if the letter says so, who may gainsay the fact? How otherwise do you account for the postscript? "If you can read this you can do more than I can."

Now, gentlemen of the jury, you have my views upon this branch of the case. The prosecution require you, under the law, to convict Crawford Black of the murder of McKaig upon the presumption of a malicious motive, and that presumption rests upon the theory that he is of depraved and malignant disposition. I have shown you that it is doubtful which of these young men began the assault which terminated in death. I have shown you that the probabilities of the question are as six to one in favor of Black.

If neither of these reasons be sufficient to warrant you in your judgment in a verdict of acquittal, then I rest his life upon his character as contrasted with that of McKaig. Look upon the two, and then say by your verdict which was the more likely to commit murder, which life exhales the sweeter perfume?

I have thus far, gentlemen, with some degree of warmth, and with much feeling, but I trust without bitterness, endeavored to impress upon you this one, but, in my judgment, important view of this case. As you have observed, I have not stopped to seize this piece of evidence and that piece of evidence. I have not stopped to trace young Black to see whether he was hunting young McKaig. The testimony on this point is of that flimsy light character that really I have not given it a passing thought. We have shown you that he went his usual way with one single purpose. He was an inveterate cigar smoker.

I suppose I will be here interrupted for the proof that some witness said that he was an inveterate cigar smoker. I await to see whether I am to be subjected to such interruption.

He was scarcely seen anywhere that he was not smoking. The only deviation from his course on this morning was to go down by way of Washington street, a short distance out of his way, to procure a cigar. He returned by the alley which led him to Centre street. Upon Centre street was the office of Mr. McKaig, and as he passed that office he looked in the window with the casual glance of a passer by. Upon that evidence you are to base what? The fact that he was hunting for McKaig. This fact must be proved equally with the main fact beyond a reasonable doubt, and you are, therefore, asked that when he cast his eye towards that office of McKaig's that he was the creeping assassin, hunting for his victim. We have shown you that he came up that street, and that it was the nearest way to reach Mr. Shriver's store, to which he went.

Now, all this testimony about standing upon this corner, and standing upon that corner, depends upon a man's appreciation of passing time, for his being in one place or another is only important as it has reference to time. If a man were to ask me now how long I had been talking to you, based upon any knowledge of the time passing in my own mind, I would not have the faintest conception. Five minutes, ten minutes, twenty minutes. Upon five minutes, ten minutes, or twenty minutes may hang the life of an individual; and yet, gentlemen of the jury, when you come to speak of some past event depending upon an inconsiderable point of time, which of you would risk, not a life, as in this case, but even a moderate wager? And yet you are to take these corner pieces of evidences, all based upon some supposed half hour, twenty minutes, ten minutes, or five minutes as solid evidence upon which to hang a man.

Again, gentlemen, glance a moment at another piece of evidence of the same airy character. There was an offer here, with great parade, of an overcoat, an immense overcoat, which Harry Black wore on the fatal morning, which was to conceal the pistol of the assassin. He was described with his hands in his pockets. He was brought to speak with a man, and would you believe it—

greeted him with his left hand. Of course, his right hand was concealing the pistol. Now this coat is not immense at all, but a very light summer overcoat. Its pockets are not deeper than mine. The pistol you saw presented before you was a pistol of great length, one of the largest sized revolvers. It was put in evidence that the weather was warm, pleasant, mild, therefore it was not necessary for him to wear an overcoat. But you see the simple production of the coat by us scatters all these inferences to the winds. If the State, then, is driven to these necessities, and we break down this kind of evidence so easily, we ask you to examine with scrutinizing glance all the other pieces of evidence that are brought in of this confirmatory character and see whether they hold any better together.

So, gentlemen, we might go over all these little outside scraps of testimony that have been brought in here as a sort of make-weight, but it would be consuming too much of your time.

I will hurry on. The gentlemen will read to you law books, and they will ask you to take those law books, with their worn out maxims, and apply them with the rigidity of the old English common law to the questions of fact involved. They claim that this case is to be governed by the common law, so do we. Heartily we concur with the prosecution in this general view, that of all the creations of man, of all his inventions, probably there is none that does more honor to his intellect than the establishment of that great system of law known as the English common law. Now the English common law, so highly prized, has been but the accreation of ages. It is not the written law of the land. It is the unwritten law. It is the crystalization of the habits, the customs, the usages, of the people of Great Britain into judicial decisions. It is, therefore, a system of law that has sprung emphatically from the people. The common law of England is well-named, for it springs from the common heart of the nation. It has been added to and it has been detracted from, from time to time, as civilization has advanced or the habits of the people changed. It is being added to now as the habits of the people change. It changes with the people. So that where you find a maxim of the common law, and you find that it is not in harmony with the civilization of the day, the thought and moral sentiment of the age, you have found a maxim of the common law that has been virtually and actually repealed. It is no longer common law, but common error. Now let me illustrate. I am not indulging in rhetoric, I am telling you what I regard as the truth. Let me illustrate. Years ago, under the English common law, a man sued another for the seduction of his daughter. What did he have to charge in his declaration? Not that the defendant seduced his daughter, and there stop. For upon that he could not recover, but the suit was brought and the plaintiff laid the allegation in his declaration that the defendant seduced his daughter—*servitium amisit*—by reason of which he lost her services. Not by reason of which he lost the honor of his family; by reason of which a stain and disgrace was brought upon his name, but by reason of which he lost her services.

Now, I am illustrating that the English common law, which

has been cited on in this character of cases, gave a man damages, not for the honor of his violated family, but because he had lost the services of his servant. She was no longer there to do his household drudgery. That was the idea. That was the only ground upon which he could recover. Why? Because the common law took no cognizance of female virtue. Woman was not the "noblest, best gift of God to man." She was his servant—his slave—nothing more. Time goes by. There is no statute repealing this law. Will anybody tell you that such is the law to-day? If not, when and how was it repealed? It was repealed by that statute which is written on men's hearts and is illustrated in their habits. The common law advances with the advancing ideas of the people. I am going along and coming down to the present day. Even now, it is necessary to lay in your declaration, your *per quod*, yet it is now regarded, and the books tell you, that it is a fiction. It is a fiction of the law and the juries are instructed to disregard it, and to give damages commensurate with the injury done to the reputation of the female and her surroundings, I say, gentlemen, that if you are to take the argument of counsel on the other side, that the letter of the law is to be complied with as though a written statute, that you will be asked to do that which is not consonant with the common law as it at present stands. Under the old common law a man was burned in the hand for manslaughter, while a woman was hung. No, she was not hung, she was quartered and burnt. Female virtue had no value. Females themselves were only looked upon as of any value, insomuch as they served the interests of their lords and masters, and yielded to his pleasures. And the written law has not changed this state of affairs. It is as much the common law of to-day on the theory of this prosecution as it was two hundred years ago. And yet they will tell you of the common law as recognized by the authorities of that day. I will show you, gentlemen, for I do not like these things to be taken on my assertion, what these authorities say.

"The husband, also," says Blackstone, "might give his wife moderate correction." That is the English common law, where females were concerned, to which our learned brothers appeal. By the common law women received sentence of death and might be executed for the first offense in simple larceny; while for the same offense a man, who could read, was subject only to burning in the hand and a few months imprisonment; female virtue was exposed to the slanders of malignity and falsehood; the purest maid or the chastest matron was no more protected than the most meretricious and incontinent of women, and thus female honor, which is dearer to the sex than their lives, was left by the common law to be the sport of every abandoned calumniator.

> "Oh, wretched woman! Oh, defenceless sex!
> Of the whole animated race, most helpless.

Much of this law has been changed by statute—all of it by public sentiment. No, except by the habits of our people; except by the usages that civilization has introduced this law remains in almost its full vigor.

But we have an American common law, as well as an English

common law. Understand me, gentlemen, it is now the American common law that a man may recover for the seduction of his daughter although he does not prove that the daughter was his servant. Yet the English common law requires that he should prove the servitude. I say that has been brought about by American usage and by the advance of civilization which recognizes the dignity of your mother; which recognizes and cherishes the honor and virginity of your daughter. It recognizes the fact that she is no longer a slave, or a servant, but that she is as a helpmate to the man, and not unfrequently a protector; and not as the dog that follows his master at a whistle; but that she is the fairest and loveliest of created things by our great Author in the image formed of His celestial glory, and designed to be man's solace. This is due to the advance of American civilization, and you will find that this advance has been made in other respects, as well as this.

I say this, gentlemen, that in the United States of America no man under God's canopy has ever died by the hand of the law for having vindicated the honor of his family by the death of the seducer. Fiction, if you please, call it fiction; yea, it is a fiction. The Court decided in the Sickles case—what? Why, the English common law says in order to reduce the killing to manslaughter you should find the man in the act of adultery. The Court in the Sickles case said: "The waving of the handkerchief, the signal given, is equivalent to finding him in the act." This may be fiction, but it is now the law.

These legal reformations have not been suddenly brought about. They have advanced to this height step by step. Judges do not discard an old principle of the law all at once; but they set up a fiction here and a fiction there, until by fiction they have practically abrogated the whole of it.

This, gentlemen, is no mere advocate's plea for his client; but the calm, deliberate utterance of a well-considered sentiment. Fathers and husbands and brothers must be taught that the hearthstone, around which gather their wives and daughters and sisters, is a charmed, sacred circle; and that he who dares invade it must pay the penalty of his life. You may kill in self-defense, this is self-defense in its sublimest form. What is a man's self? Is it his mere living, breathing anatomy? A thing of flesh and blood and bone and sinew? No! A man's self is more than this—it is his honor.

> "Mine honor is my life, both grow in one;
> Take honor from me, and my life is done."

Who plays a game to rob him of this prize should stake all he has upon the hazard of the die—his life.

Now, gentlemen, I feel that I have done, however imperfectly, all that can be reasonably expected of me in this cause. I am disposed, therefore, to leave it in the hands of those who are associated with me. The time is come toward which all of us—you, the honorable bench, my distinguished colleagues, my learned brothers of the prosecution, and myself—have been struggling through all these anxious days. In a few hours more there will be committed to your keeping that which is the most precious

charge that can be given to it, the destinies of a human being. When your verdict is recorded, and you have gone forth from the court-house; gone back to the cherished circle of your loved ones at home, to your mothers and sisters, to your wives and daughters—what then? Shall we, in the no distant future, behold a morbid crowd, hurrying, some bright day, into the town of Cumberland, and standing with them beneath the gallows, shall we gaze upon a shrouded figure, hear the dull thud as a lifeless body falls through the scaffold drop? Shall we stand bowed and uncovered around an open grave, and hear the solemn voice of the minister of God as he pronounces dust to dust, ashes to ashes; witness the strong agony of the stricken father, and hear the heart-rending shrieks from the sorrowing mother as the cold clods fall on the coffined breast of an only darling son? And if some curious stranger should inquire "whose grave is this?" shall he be told that it is the grave of Harry Crawford Black, who was hung—yes, hung—by a Frederick county jury as a felon, as a murderer because he slew the seducer of his sister? God forbid that such shall be the consequence of your verdict. Rather let it be said, gentlemen, that a youth in the vigor of manhood entered an humble dwelling, won the affections of her who was its dearest treasure; that he betrayed her, that he seduced her, that he polluted her, that he afterward vilified her, and branded her in the face of the world as a strumpet; that for this crime her brother killed him, that he was tried and acquitted by a Frederick county jury, who thus proclaimed to the world that they cherished the honor and chastity of their wives and daughters more than life itself.

Apologizing, gentlemen, for the time I have occupied, and thanking you for the very marked attention you have given me, I leave this case in the hands of those who are better able to take charge of it.

SYNOPSIS

OF THE

ARGUMENT OF WILLIAM M. PRICE.

GENTLEMEN OF THE JURY: I feel much embarrassed in coming before you after having heard the able and eloquent argument that has already been delivered, more, perhaps, than I would feel if I had opened the case. I am here a stranger among you, as is also the prisoner at the bar; away from his native place, his home, the scenes with which he is familiar, the community in which he is loved and respected, he sits among strangers, not through any wish of his own, but at the instance of the State of Maryland, at the suggestion and upon the oath of the State's attorney for Alleghany county. It is not his fault that he is here; but he has no fears to trust his rights, his honor, his life in the hands of a Frederick county jury. The learned counsel for the State had said that the whole city of Cumberland was thrown into mourning by the death of the victim of this unhappy tragedy. If that be the fact, if such was the grief of the community, if such was the esteem in which the deceased was held, why was not the State willing to go to trial before a jury in that county? McKaig had wealthy and influential friends, who were able to take this case out of the hands of the State, or at least to give it the semblance of a private rather than a public prosecution, and, as you have no doubt observed that which has been patent to all who have attended this trial, such has been the case. With all such influences on the side of the State, the position and wealth of the friends of the deceased, and the alleged sympathy of the community, it is singular that the prosecution has fled to another county for justice. And who are prosecuting here? The learned attorney general says he has no interest in this case, the State's attorney of this county says he has no interest in it. We have the remarkable anomoly of a hired prosecutor for private vengeance, seeking the blood of this boy to satiate their unholy desires for revenge. Why they fled from this *mourning* and *outraged* community I leave you to answer.

Gentlemen of the jury, if you will give me your attention for a few moments I shall endeavor to present you this case as it has struck me during its progress.

Mr. Price then called the attention of the jury to the condition and position of the parties on the fatal morning.

The sister was absent from home at a place unknown to the prisoner. The fact had been told him of the difficulty between his father and deceased, but the true reason of that difficulty he had not learned until

on the Sunday before the shooting. That he did know anything about it before is only an inference or assumption; there is no proof of it. On Sunday he is told all about it, he is shown the letter of McKaig to Myra, appointing a meeting at his (McKaig's) house in the absence of his wife; he is told that Myra has a child four months old; he is told by his loving and blessed mother the harrowing facts; he beholds the shame, the deep, dark, and damning outrage that had been brought upon his sister and the family by McKaig; he is told of the threats that McKaig had made against him; he sees the ruin of all his cherished hopes in life through the wiles and arts of the seducer. Great God! Can the heart of man pulsate as usual under the fiery ordeal he was then passing through? Knowing all this, feeling and seeing all this, is it any wonder the seducer fell before his unerring aim?

Mr. Price then gave a detailed account of what had been told the prisoner by Lowndes, Mrs. Black, Henshaw, Long, and others, as to McKaig being the seducer of his (Black's) sister, &c. He argued that Dougherty and Johnson had no position in court as witnesses as against Long, as Long had told what he had seen, and what they had not; he stands before you, as jurors, as fair as they did, and as worthy of belief.

He then explained the position of the witnesses about the Revere House.

The counsel then proceeded to develop the theory of self-defense. Black shot McKaig in time to save his own life. Six witnesses swear that they saw McKaig draw his pistol first. Two men, Dr. Healey and Dr. Smith, have sworn that they did not see a pistol in McKaig's hand. But, on the other hand, six reputable witnesses have sworn that they *did* see a pistol, and, after hearing the ruling of the Court the other day as to the value of negative testimony, there should be no difficulty as to which statement should be believed. It has been testified by two witnesses that when the body of McKaig was lifted up that a revolver dropped from his person, which Mr. Tearney picked up. Tearney himself has been here all the time, and yet he has never been put upon the stand to say whether he did or did not pick up a pistol, as the other witnessss had testified. There was another pistol, which Tearney did not see. Two pistols were exhibited here which were admitted to have been taken from McKaig's person. Mr. Price said one witness says McKaig was shot in the back, and another says in front. As to where Black shot him is not an issue here. He shot him in self-defense. I go no further than that, gentlemen of the jury. I say that Crawford Black having heard what he did on Saturday evening, having heard what he did on Sunday, and believing, as he did, what his poor broken-hearted mother told him, believing that McKaig was the seducer of his sister, I say that the prisoner, or his father, had the right, the God-given right, to slay that man who had thus treated them wherever they met him.

We have no statute in Maryland to punish the crime of seduction—the worst of all crimes. And why have we not? Because God, in his wisdom, knowing the enormity of the crime, the blackness of darkness that surrounds the victim of the lust of the seducer, hath retained the power in his own hands to punish it, and appoints his instruments to slay the seducer. And I say God strengthen the heart and steady the hand that speed the bullet to the vitals of such men. And who had a better right to redress the wrongs of that sister, to avenge the ruin

brought upon that household than the brother? You cannot, gentlemen, under any circumstances, weigh these facts and then give damage to the parties who claim to be aggrieved in this case.

The counsel then went into a very close and searching review of all the testimony in the case, and bore down very hard at times upon some of the State's witnesses, hired counsel, &c., and stated that we stand here declaring that Black shot McKaig to save his own life. We stand on broader ground than this. He had *the right* to kill the seducer of his sister—to redress the wrongs inflicted upon his family, he was the instrument in the hands of God to satisfy the demands of an offended justice.

In conclusion, Mr. Price appealed to the jury as men, as fathers, as brothers, as upholders of female virtue, to find such a verdict as would reflect the sentiment of Frederick county on the crime of seduction, as would send this boy back to his anxious father, mother, and friends, as would restore him to those who loved him so well, as would say to seducers and libertines in Alleghany county, we applaud and justify any father, husband, or brother who will rid this beautiful earth of their baleful presence. Your wives, daughters, and sisters look to you, gentlemen, to render such a verdict in this case as will protect them from such insidious foes.

HON. A. K. SYESTER

ARGUMENT

OF

HON. A. K. SYESTER.

May it please the Court, Gentlemen of the Jury, in dealing with a case on which the life or death of a human being is embarked, I desire to treat of the facts and the law of the case, and of those alone.

I shall find no time, and I entertain no inclination whatever to indulge in any remarks having reference to the relations which any persons bear to this case. The motives which may actuate others in the prosecution of my client, and their purposes have nothing to do with the real cause before you, except so far as they have fashioned and given tone and temper to the prosecution itself.

But while I may with entire propriety withhold the expression of any opinion on the subjects just alluded to, my duty compels me to advert (and my feelings may lead me to do so with emphasis) to some of the circumstances that have marked this prosecution, and have distinguished it for bitterness, above anything of the kind that has ever fallen under my notice in the course of a practice of over seventeen years. Gentlemen, the importance of this case to the prisoner at your bar, to his afflicted and heart-broken parents, and to all those who are near and dear to him by the ties of nature and blood cannot be magnified.

To him it involves nothing less than his life—to them the crushing sorrows and painful griefs, which must be expressed in tears and wretchedness over his early grave, or the smiles and joys which will welcome him once more to the arms of a family whose name he has not dishonored, and to the bosom of a society whose peace and order he has not unlawfully broken.

You find him, his counsel, and witnesses all strangers before you, and the prosecution for his life fortified by gentlemen conspicuous for their ability, learning, and experience.

I pass over the circumstances of the removal of this case at the instance of the prosecution, and the draging of the prisoner over a hundred miles away from his home to be tried before strangers. All that I have adverted to in my opening state of facts a few days ago.

I pass over other circumstances, prominent in this case, which have occurred to me as unusual and unprecedented, and call your attention to some of the things that have transpired before you, and which are full of significance.

Look, in the first place, to the remarkable fact that we have been engaged now for nine days in inquiring into a transaction that

occurred in the presence and also under the eyes of no less than twelve or thirteen persons. And when the prosecution undertook to develop the facts of that transaction it contented itself with calling but three witnesses out of the twelve, in order to lay the truth before you.

One of those witnesses (Mr. Conner) saw nothing of it, except the very last moment of the scene of that tragedy—he saw only the dead body of McKaig. Two others, Dr. Healy and Mr. Gross, saw some part of the transaction. Indeed, it is quite plain that Gross saw no part of the beginning of the transaction at all. He saw nothing of that part of the affair which is the turning point in the whole case, and which is the one great controlling central fact in this whole transaction. He tells you he was looking from a window, and seeing people looking up street, looked up also, and then saw McKaig off the pavement retreating toward the north side of Baltimore street, Black following him.

Now, gentlemen, *that* part of the affair is what a dozen other witnesses saw, and eight of them saw more. Eight others saw what this prosecution has openly endeavored to suppress; they saw what occurred before Mr. Gross looked at all, and it is just here, around what occurred before Gross saw anything, that the whole interest of this case centers. It is around what transpired before a shot was fired that the contest in this case rages, and there centers and concentrates the momentous facts of this trial, and it is just there, as to what took place, what was done by these parties before any shot was fired at all that I invite your attention, for on a proper and and clear view of that depends the issues of life and death here as they were made up and staked on that fatal, bloody morning.

Gentlemen, Mr. Gross tells you he was looking at the men loading a stove, and when I asked him why he should have put himself to so much trouble as to leave his work, get on his knees, and crawl over his work-bench to look at an occurrence which he must have witnessed a hundred times in his life, he told you that the reason why he did that was because the men were "straining" themselves lifting in the stove; and it was while they were thus "straining themselves" he saw a commotion and heard the report of a pistol. He looked, and McKaig was near the middle of the street. Now, in the subsequent stages of the case, Mr. Moorehead is called by the prosecution, and he swears he was proprietor of that store; that he had been engaged in loading that stove; that the stove was on the wagon, and all hands had retired into the store-room, looking for the furniture of the stove; and it was then, after they had left the street, and were inside that he heard the report of a pistol, went out, and saw McKaig in the middle of the street, with Black at his back or side, and then a second fire or report of a pistol.

Now, that is plainly the report which our good friend Gross called the first report, and this prosecution in the face of all this was willing to send the soul of this boy at your bar to eternity, consign his body to an ignominious grave, and couple his name and memory with the crime of a murderous assassin by laying before you only a partial view of the matter into which it professed to be

inquiring with the sole and only purpose of testing its truth, its whole truth, and nothing but the truth.

You will not fail to remember that the prosecution rested its case on the testimony of Dr. Healy, Mr. Gross, and Cornelius Conner, and that Moorehead was not called until the defense opened up the whole transaction, which I here declare was the duty of the prosecution to have done in the first place.

Mr. Gross was called on to testify to what this prosecution knew was but a partial view of the case, and on his testimony, revealing only part of the case, with full knowledge of all the other facts, the gentlemen conducting this determined and energetic prosecution were willing to rest this cause, freighted as it is with the life of a young man whose name and character has been maintained and upheld for all that is orderly, peaceful, and gentle by the unanimous voice of the entire people before whom he has gone in and out from his childhood.

Was this prosecution dealing fairly and candidly with you? Are gentlemen entitled to the confidences of a jury when found resorting to practices like that, and that, too, in a case like this? Mr. Gross saw no pistol in McKaig's hands; neither did Dr. Healy or any other witnesses called by the State. Those alone who saw least of this affair have been relied on by the prosecution, and they now have the boldness to look astonished and profess wonder at the idea of the prisoner setting up the doctrine that McKaig was armed with deadly weapons that morning, and would have you believe that they participate in the astonishment of Dr. Healy, who declared on his oath that he first heard of McKaig being armed and ready to fight when I made the prisoner's statement the other day. Why, gentlemen, the street that morning was strewn with pistols, and McKaig, who left his home that morning "in the peace of God and the State of Maryland," was a walking battery, armed to the teeth with not less than eighteen deadly shots. The developments of the entire case show this, and show it, too, from the lips of witnesses for the State, and yet in the presence of all this you have been gravely told that nothing was ever heard of the theory of self-defense until it was disclosed by me in my opening statement.

Follow this thing one step further, and see how far this prosecution has been dealing candidly with the jury, and fairly with the life of the prisoner. I hold in my hand the indictment found by the grand jury of Alleghany county. You will remember that we, the defense, called a witness, Dr. Hummelshine, who proved that immediately after the first fire he saw McKaig with his hands slightly elevated just as he was leaving or had left the curb, and that a dark object fell as if from his hand, and which the witness thought was a pistol. Now, gentlemen, will you believe me when I tell you that this witness Dr. Hummelshine was the only witness on whose testimony this very indictment was found? And can it be believed by any candid mind that all he would say was not known to this prosecution, and that our friends refused to call him because they knew what he would detail, and knew that his evidence would go to establish the very defense of which they have declared to you and this court they were in profound ignorance

until this case opened? In the face of a fact like that what becomes of all the affected astonishment of the gentlemen at what they have denominated the "pretended theory of self-defense?" And is not this worse than trifling with the lives of the people? Is it anything else than a barefaced, unblushing, unscrupulous attempt to drag this prisoner to the gallows, to hurry him to an early and horrible death by suppressing evidences that establish his innocence, and depriving him of the means of salvation from a doom at the bare contemplation of which the very blood runs cold?

In a suit for property, in a conflict for dollars and cents, you may not and do not call a witness whose testimony may ruin your cause; but the spirit which pervades actions of that kind never before obtruded itself in a capital case, except in the hands and at the bidding of those whose names and memories are linked forever with the universal horror and destestation of mankind, because they prostituted the forms and privileges of legal procedures into the instruments of torment and death. And are not such practices as these against the honor, "government, and dignity of the State?"

It is true the State has a profound interest in the preservation of order in society, and in protecting the body politic against violence, but its policy, mercy, and humanity requires that when one of its citizens stands charged with a crime, against which it has denounced the forfeiture of liberty or life, every fact, every circumstance connected with the transaction which forms the subject of inquiry shall be fully disclosed and impartially unfolded. It takes no pleasure in the death of its citizens; delights not in the misery and sorrow of its people. When it assumes to drag any of the people before its tribunals charged with a crime, the consequences of which are so fearful and revolting as those denounced against that with which my client is charged, it does not assume the character of a mere bandying, party litigant, gloating over the prospect of a success that will lay an adversary low in the grave, and dishonor his name and memory among men.

If it frowns on crime it ever turns with benignity and mercy to the accused. It wages no war of tricks, devices, and artifices upon the people, it requires that before a hair of the head of one of its people shall be injured under a criminal charge every fact, every circumstance connected with the transaction, shall be rigorously and impartially explored and scrupulously eliminated.

While it employs all its power to bring offenders to justice, at the same time, in consideration of the liberty, the honor, and lives of the people, and the warm living affection that cluster around the accused, it demands that every thing shall be fair, clear, manifest, and certain; and that before a feather's weight shall be added to the perilous state of the accused; before a single trace of anguish shall pierce the hearts of those who love him, or a single hair of his head shall fall, the very last syllable of legal proof shall be supplied, so that nothing dark, nothing oblique, nothing unknown or unexplained shall remain. It requires that everything shall be fully and faithfully unfolded, nothing withheld, nothing suppressed. Its policy, laws, and legal procedures

are all impregnated with that Divine sentiment which takes no pleasure in the destruction of the people, but would rather all should live, and none perish.

Sirs, if I am right in this, how fearfully and fatally at war with the genius and spirit of law and justice, has been the conduct of these prosecutors, in attempting to lay before you a partial revelation of the facts you are sworn to inquire into, and in suppressing the testimony of Dr. Hummelshine.

Gentlemen, you may now begin to discover something of the temper and purposes of this prosecution.

Before I pass to the facts of this case, there is one other circumstance I must advert to: You will remember that we offered to show the seduction and ruin of Myra Black, the prisoner's sister, by the deceased. When that offer was made the prosecution resisted and objected to it as not competent evidence for any purpose in this cause; and upon the motion, and at the instance of our learned brothers for the State, the Court refused to allow us to prove that fact. Therefore, Miss Myra Black was out of the case. No testimony of hers, and nothing relating to her history, conduct, or character was, or has been before you; all excluded at the instance of the State.

The opinion of the Court, ruling out all that evidence, was yet ringing in our ears, when the gentlemen for the State called a witness to testify to the general character of that lady, to degrade and dishonor the very name and character of her, whose evidence the prosecution had just objected to, and excluded from the jury.

Can you conceive the motive that prompted such an offer after what had occurred? Do you believe that these gentlemen called that witness and propounded such a question, under a conviction, or even an impression on their minds that such an inquiry would be tolerated for one moment? Do you suppose that our friends really thought that the general character of that ruined and unhappy lady had anything to do with this case? especially after they themselves had objected to the only circumstance connected with her ruined state, which would have given even a shadow to the relevancy of such testimony?

Gentlemen of the jury, that was a plain, open, undisguised attempt to trifle with your intelligence, and wantonly to mortify the prisoner, his parents, and relatives, not by proving any *fact of her life*, but by laying before you the idle gossips and slanderous conversations of others.

I have no doubt the witness called (God help him, I can not recall the creature's name) would have sworn to all that this prosecution required. I doubt not he would have told us that he was sitting down somewhere, perhaps on a store box, in an office, or on a tombstone, with somebody no better than himself, discussing and dissecting, destroying and degrading the character of this, and other young girls.

It is an easy matter for young gentlemen to do such things as that, especially when the girl herself may never hear of it, and when her parents are old and infirm, and her brothers far away, engrossed in the stern battle of life.

It is a safe occupation, too, because young girls are not often

dangerous, and when you have no more property than character or honor, you may bid defiance to the law, which denounces its heaviest judgments against the slanderer in pecuniary damages.

But, oh, how many pure names have been blighted, how many blameless characters have been tarnished by just such persons as these? How many pure, but stricken hearts have felt the stings of a social attainder tingling in the warm currents that are throbbing there, all unconscious, that perhaps the very lips that flattered most, had whispered the lie that grew and grew until it overshadowed hope and life itself. The only wonder is, that the swift vengeance of Heaven can slumber while these ministers of hell are dragging the purest, fairest, and best of God's creation from honor, peace, and respectability, to shame and misery.

Outcasts from Heaven and from prayer, as such men are, I know that society sometimes compounds with their low transgressions; but what do you think, gentlemen, of a prosecution against the life of a fellow-citizen that will lay its hands on a thing so unclean, and make it the channel through which the unpoluted stream of evidence shall flow to a jury?

Let us now address ourselves to the law and facts of the case, of which you, gentlemen, are the sole judges under the constitution of this State. With the law as well as the facts you and you alone must deal in making up the verdict here. You cannot receive a binding instruction on either from the Court.

In criminal cases the jury, not their honors on the bench, but the jury are to judge the law, and a more solemn and responsible obligation cannot be imposed on men. You must not only find what is true in point of fact, as connected with this transaction, but having found what is true, you must apply the law to those facts, and determine whether the prisoner be guilty or not guilty. This is your exclusive duty. You will see at a glance the high and delicate grounds you occupy. From your decision there lies no appeal; what you shall determine is fixed, and there is no power under the laws of this State to revise your judgment or review the grounds of your determination.

A mistake here, a hasty ill-advised conclusion, an erroneous judgment, an omission to give due weight to any principle of law, or an indifference to, or ignorance of, any of the elements which, at law, go to make the crime of murder, may drag my client to death, lay sorrow and wretchedness on the humble hearthstone of a family already sufficiently miserable, and become the source of painful and unavailing regret to all of you during the remainder of your days on earth.

The prisoner stands before you to-day just on the threshold of life with all its bounding hopes, its fair visions, and bright prospects before him, and your verdict must determine whether all these shall be shut up and concluded forever in the solemn silence of the grave, or whether he, while the dews of his morning are yet fresh and bright upon his brow, shall be returned again to that life of usefulness, honor, and respectability on which he had just entered when its brightness was suddenly darkened by this prosecution.

It is a fearful thing to deal with life, and yet, as I have said,

from your judgment in this case there is no appeal; there is no revisionary power which can review its soundness, explore its errors, if error there shall be, and right the wrong which indifference or inattention may inflict—for such is the law of this State of Maryland. Indeed there is no part of this trial, neither the part that you perform, which is by far the most responsible and sacred, nor the part imposed upon the Court, that can ever become the subject of review or revision by any other tribunal in the land.

If my client were before this Court contending for his right to property, even of the small value of seventy-five or eighty dollars, yes, even of fifty-one dollars, everything connected with such a trial would become legtimate objects of appeal, and revision before the higher tribunals of the State. If in such a case, a trial for the value of a horse worth but fifty-one dollars, originating in this Court, their honors should allow an item of illegal evidence to be laid before you, that ruling would become the subject of revision before the high Court of Appeals of the State, and upon discovering error in such a ruling that court would send the case back here for a new trial.

If an item of evidence offered by a defendant in a case originating in our circuit courts, where the amount in controversy exceeds fifty dollars is rejected, that rejected offer, at his election, may be carried to the appellate court, and the party feeling himself aggrieved is clothed with the right to have the judgment of that tribunal as to the subject-matter of his appeal; but a defendant on trial for his life enjoys no such privilege under the laws of this "*good old State of Maryland.*"

If the inferior court determine against a prisoner on a question of evidence affecting his life, he enjoys no right of appeal, but if it concerned not his life, but an article of property worth not less than fifty dollars and ten cents, he may invoke the enlightened judgment of the eight judges of our appellate court.

If in a question concerning character, and where a jury had returned a verdict of one cent damages, the party defendant feels himself aggrieved, either by the rejection of proffered evidence or the admission of evidence against him, or by the instructions of the Court against him, he may have the entire matter reviewed before the appellate tribunal, and if there be error in any of the opinions of the *nisi prius* court, that defendant may have a new trial in reference to that one cent damage; but where character, honor, life, the affections of whole families, the joys and loves, or sorrows and woes of parents or children are involved, this "gallant State of Maryland" of ours gives no such right. There is no bill of exception in any criminal case in this State. Whatever is done in the *nisi prius* court in such cases is final. You may ask and obtain a binding instruction in any civil case, and if the Court refuse your application, you may appeal and reverse that judgment, but in a case like this, if an instruction were asked for *and denied*, that denial would form no subject of appeal.

Indeed, gentlemen, if the Court should assume to instruct you without the consent of both counsel for State and prisoner, such instruction would not be binding on you; you would still be at liberty to disregard the instruction, and determine the law accord-

ing to your own judgments. In view of all this, I am quite sure you will bear with me while I attempt, in the first place, to lay before you and make plain the principles of law that, in my judgment, govern and control this case. If I can aid you, gentlemen, in coming to a just conclusion on that subject there will be left but one other subject: the facts, on which you are to pass, and upon that I feel such great reliance in your capacity and intelligence to collate, digest, and comprehend them that I shall trespass but a few moments on your time in their consideration.

I have adverted to the differences made by the law of this State between a party contending for money or property, and a man struggling for his life in no spirit of complaint, (although I have always regarded it as a stain and blemish on a judicial system which prides itself so much on its justice and equality,) but I have done so for the purpose of advertising you of the tremendous responsibilities that lie before you, and of admonishing you of the care and caution with which you ought to govern yourselves in traversing those paths of inquiry, on which your feet are now pressing, perhaps, for the first time in your lives.

Now, gentlemen, the very first step in an inquiry like this confronts us with a doctrine as venerable and indestructible as the common law itself, a doctrine that meets the accused in every case, on the very threshold of his trial, that walks with him through the fiery ordeal of the prosecution, shielding and defending him against all presumptions, and like a blessing and benediction, raising up every presumption in favor of innocence.

It is in obedience to this principle that the whole burden of proof falls on the prosecution, and there it rests until the last item of proof is supplied, it never shifts, and this legal presumption of innocence is to be regarded by the jury, not as a mere theory or an unmeaning thing, not as idle talk or mere verbiage, *but as matter of evidence*, to the benefit of which the party accused is entitled. I say not as a myth, or something without any significance, but as evidence. I refer to 1st Greenleaf, sec. 34. Moreover, there is a wide difference in the standard of proof as applied to criminal and civil cases. In criminal cases the law has attempted to set up a standard of proof, and, so far as human thought and language can do so, it does define the degree and quality of evidence necessary for a conviction.

You will see, gentlemen, if you will give me your attention, how cautious, how careful the law is on this point. You will see every form of expression used, in order to set this matter in a clear light, and will notice the plain, direct, concise language employed to enforce it. You will not fail to notice how solicitous the law is to draw broad, clear, deep lines of distinction between those evidences and proofs which govern us in ordinary civil cases and those strong, convincing, and manifest assurances which must be developed in cases of this kind. You will find that this is no case in which you are at liberty to scrutinize and explore mere probabilities; no room here for weighing the preponderance of evidence, nor considering the weight of prepondering evidence. Nothing but those proofs that generate conviction to the exclusion of all reasonable doubt; nothing short of such proofs and evidences can justify a verdict against the prisoner at the bar, unless at the haz-

ard of the oaths you took to administer in its letter and in its spirit the law I am now about to read. I read from sec. 29th of 3d Greenleaf on Evidence:

"A distinction is to be noted between civil and criminal cases in respect to the degree or quantity of evidence necessary to justify the jury in finding their verdict for the government. In civil cases their duty is to weigh the evidence carefully, and find for the party in whose favor the evidence preponderates. But in *criminal* trials the party accused is entitled to the legal presumption in favor of innocence, which, in doubtful cases, is always sufficient to turn the scale in his favor. It is, therefore, a rule of criminal law that the guilt of the accused must be fully proved.

"Neither a mere preponderance of evidence, nor any weight of preponderant evidence is sufficient for the purpose unless it generate full belief of the fact to the exclusion of all reasonable doubt. The oath administered to jurors according to the common law is in accordance with this distinction.

"In civil cases they are sworn well and truly to try the issue between the parties according to the law and evidence given; but in criminal cases their oath is 'well and truly to try, and a true deliverance make between the State and the prisoner at the bar. * * For it is not enough that the evidence goes to show his guilt: it must be inconsistent with the reasonable supposition of his innocence; it is better to err in acquitting than in punishing, on the side of mercey than on the side of justice.'"

Now, that, gentlemen, is but the general principle that lies at the foundation of all criminal trials. It is a proposition engrafted on the criminal law long before the book I have read it from was written; and, indeed, before any regular treatise on the common law was written by any one. It existed and was conspicuous when all other principles of law applicable to the investigation of crime were in utter confusion and obscurity, for we read in a note to that same section that King Alfred of England caused forty-four of his judges to be hanged in one year, because of their false judgments in this particular. I will read it to you, and I beg you to notice its strong, masculine language. It is taken from the Mirror, written at a early period, which "reckons it to be among the *abuses* of the common law that justices and their officers who kill the people by false judgments be not destroyed as other murderers, which King Alfred caused to be done, who had forty-four justices, in one year, hanged because of their false judgment. From that day to this that principle of criminal law has been dear to all those who value the rights, the liberties, and lives of the people. Whatever else has changed, whatever else has been assailed, whatever else has fluctuated, this has stood its ground unmoved, unassailed, and untroubled.

It has stood by the accused for centuries, and in the midst of passion and feeling, of vengeance and oppression, when night hung low and wild over the dashing waters of persecution and oppressive power, it has thrown far out on the troubled scene the promises of hope and life, where otherwise dispair and death had ruled and rode supreme. It is the spirit and genius of the old common law of England, under whose auspicies so many innocent men

have successfully braved the frowns of power and walked unscathed, and unharmed through the fiery furnace of prosecutions, marked and distinguished by every circumstance of power, vengeance, and oppression.

I invoke it, to-day, for this boy, and demand it in the name of that oath by which each one of you bound yourselves to the throne of eternal justice, to administer the law of the land in this case.

With this great cardinal principle before us, let us proceed to the examination of some of the facts as connected with the homicide.

My client has been denounced as a murderer and an assassin. He has been presented before this Court and before you, as having gone stealthily about the streets of Cumberland, and in the neighborhood of the place of McKaig's business, peering into windows and skulking into door-ways, waiting and watching to take his victim at disadvantage, and without warning to set upon and kill him. And terms, which were galling to a sensitive mind in the extreme, have been employed to describe the transaction, which has been unfolded to you by the evidence, and the main facts of which I will now recall to your recollection, and then apply the law specifically applicable to those facts.

On that October morning you find the prisoner walking along the south side of Baltimore street, in Cumberland, westward. About the same time McKaig is found going eastward along the north side of the same street. When, from the distance that separated them, it was probable that each one could have seen the other, McKaig leaves the side of the street he is walking on, and deliberately crosses over to the side on which Black is walking.

Now, gentlemen, if such a fact as that had been proven as to Black, what a theme for declamation and denunciation would it not have furnished to our friends prosecuting in this case?

Why, because he walked past McKaig's place of business that morning, and dared to turn his head or eye toward the windows of that foundry this prosecution has attempted to extract from that circumstance strong and satisfactory proof that he was there, in their own expressive vernacular, "skulking." Because he passed that morning along center street, as he had passed hundreds of times before, and, as the proof shows you, he must pass to go into the business part of the town; he is described as laying in wait.

Because he was seen standing on the step, and in the door-way of a public store, on the principal street in Cumberland, when McKaig was nowhere in sight, he has been denounced as having concealed himself for the purpose of avoiding the observation of McKaig, the better and surer to affect his murderous purpose of springing upon him and dealing death to his person.

If a fact like this had, or could have, been shown; if Black had crossed over to the side McKaig was on, you would have heard the loud, indignant, and triumphant declamations of our friends on the subject until this court hall would have echoed and reechoed, with their noisey clamor for his life. And, indeed, it is a significant fact; one that would have been ugly enough for us to have explained, but its significance is in no respect diminished, because it was McKaig and not Black who crossed over.

You will remember, gentlemen, that that was not the first time McKaig had gone out of his way to intercept the prisoner. You have heard enough to satisfy you that McKaig not only did not hesitate to go out of his way to meet Black face to face, but that on one occasion he went far enough to have provoked an encounter had the prisoner been less orderly and peaceful in his disposition.

You cannot overlook the affair at Furgeson's saloon, where the prisoner was wantonly jostled and insulted, and where he reminded McKaig that that affair constituted the second insult he had offered that day. What the first was we have not been able to show you. You cannot fail to remember, also, what had occurred under the eye of John Long, and the communication made by Long to Black.

If these things had been done by Black toward McKaig; if Black could be shown to have previously gone out of his way to encounter McKaig; if he could have been shown to have wantonly insulted him, and have stood and waited and watched for him, and then to have followed him along the street, and then on that morning of the 17th of October, could have been shown to have left the side of the street he was walking on and gone over to that on which McKaig was passing, then would these gentlemen prosecuting have found in all these things an argument powerful and overwhelming on the point, that the crossing and the meeting was with no peaceful purpose, but that it was the offspring of a deliberate, studied, settled purpose to force an encounter on an unwilling and unoffending man.

But do these acts loose their significance because they were done by McKaig and not by Black? Is there any reason why they should be supposed to indicate a motive or design, as to one, and not as to the other? Are you to presume that McKaig was without a motive when he crossed that street? But can you hesitate in discovering that motive in the light of his previous behavior toward the prisoner?

We must judge men by their conduct; you have been invoked to judge the prisoner by his; you have been told that his walking by McKaig's foundry that morning, his standing in the door of a public store in broad day light, furnish indices of a motive on his part to lay in wait, and conceal himself, the better and more surely to effect murderous purposes. Apply the same judgment to the conduct of the deceased; subject his acts to the same scrutiny to which they would subject those of Black, and your inferences will not be of that overstrained, farfetched character which, I am sure, every candid mind must say marked the conclusion drawn by the prosecution from the acts of Black.

Here, gentlemen, are acts that lie close to motives; here is conduct that is hardly to be misinterpreted. Let us go one step further. McKaig has crossed to the side on which he must have seen Black; they meet face to face; there is no living creature who saw the beginning of that encounter. Not a single man, woman, or child who swears at what time either of these parties drew his pistol. That both were armed is too plain for argument. That each drew his revolver is equally plain. But who drew first?

Which of these two made the first hostile demonstration no human being is found to tell us.

That is a matter of inference and inference alone; it is a matter of presumption, and of presumption alone; it is a fact to be inferred, or to be presumed; it has not been shown by any direct proof. It is to be presumed, it must be inferred, by circumstances and circumstances alone. It is the all-controlling fact in this case; the central fact, around which the interest and issues of this case congregate and thicken. But it can only be ascertained by circumstances, circumstantial evidence. How are we to deal with it? What is the rule of criminal law when we come to deal with circumstantial evidence?

My brother Nelson has read to you the rule on that subject, as laid down by Baron Alderson, a rule which is in perfect harmony with the spirit of that great fundamental and unalterable rule which I have endeavored to impress upon you. He has read that rule from one of the ablest law writers that ever wrote. Before you can convict my client you must be convinced that he commenced that fight by first drawing his pistol. And the conviction of that fact, on your minds, must be something more than a rational conviction, it must be, in the language of the rule read, ' the only rational conviction which the circumstances will enable you to draw,"

Gentlemen, are you at all convinced that Black first drew his pistol? Does the subsequent occurrences satisfy you of that fact? Does all that preceded that meeting, all that attend it, and all that followed it, produce upon your minds the conviction that Black was the first to show hostility? And is that the only rational conviction which the circumstances enable you to draw?

Just look at this case! At this point you are left to find your way to the heart of the case, to its thinking head and beating heart, by the light of other facts—by circumstances. You are to find that Black commenced that assault, not from what anybody saw, but from other facts. What other facts? Because he was armed? Why, McKaig had three pistols to his one.

Consider for one moment this circumstance; seven witnesses called by the defense saw a pistol in McKaig's hand, or saw it falling from his hand after the first fire, and before the second. It is in proof before you that the first fire took effect in McKaig's side, and passed nearly through his body.

Do you believe that after a shot like that, shocking and paralyzing his entire system, and shattering his strength, he was able to have reached behind him and drawn a pistol from his holster? No, no; that pistol which fell from his right hand after the first, and before the second shot was delivered, was in that right hand before any shot was fired—before Black fired at all.

It is absolutely impossible to conceive how any other conclusion can be drawn. The ball that struck McKaig was as large as an ordinary Minnie ball. The parties were not five feet apart; the ball passed nearly through the body, and under the sudden, shattering shock and prostrating paralysis of that deadly fire, and in the brief interval that elapsed before the second shot, it is incredible that McKaig, or any other man in his situation, could have reached behind him and drawn a pistol. That pistol was in Mc-

Kaig's right hand before he was shot. And this view of the case is powerfully confirmed by the testimony of Enos Davis.

That witness saw McKaig cross the street; he saw him when he reached the curb at Ryan's corner, and there he saw him change his cane from his right to his left hand and reach back. He saw more—he saw something "glisten." Now, that took place, according to these maps, some ten or twelve steps from the place where he was when attention was arrested by the first fire. Black's fire could not have been delivered until the parties were within four or five feet of each other, certainly; after the first fire, and when attention was arrested, McKaig is found some ten or twelve feet beyond the place where Davis saw him change his cane and reach behind for his pistol.

At what precise point of time that pistol was drawn cannot be ascertained with precision. But every principle of law, the spirit and the very letter of that great rule of criminal law I have just adverted to, demands that no presumption shall be indulged in against the prisoner. That the burden of proving his innocence is not in him; but that the whole matter must be revealed to your minds by the State, in such a manner, and by such strong, conclusive, manifest proofs, as to remove all doubt on the subject.

Can you look upon this scene, and declare that all is plain, clear, and certain?

Are you satisfied by the proofs that Black commenced that affray, by first drawing his pistol? Has the State proven that fact to your entire satisfaction? Sirs, the probabilities are all the other way. The law as to self-defense is scarcely susceptible of an accurate definition. Indeed, the law of self-defense is one that is not and cannot be defined in men's books. It is written in men's natures, stamped upon their hearts, and each case presents its own peculiar and distinguishing circumstances, and depends upon them. It is fashionable for prosecutions to dwell on old definitions, as found in very early writers on this subject, and they are full of expressions about "retreating to the wall," and "declining the contest," and refined, artificial distinctions, which are painful to dissect, and which profess to lay down rules for the government of a man's conduct and action in moments of extremity and peril, when, to pause and recall to mind such artificial, technical rules, would be set down by the world as mere sheer idiocy itself.

Gentlemen of the jury, when these rules, these absurdities about declining contests and retreating to walls prevailed, they were founded on a view of the relations of man to government and society, wholly different from those prevailing now. They are the offspring of that sentiment which made society and government everything and man nothing. When the life of a human being was regarded as the property of the government, and when the slightest infraction of the police regulations of society was esteemed the most grievous offense. When men were called on and compelled to sacrifice everything, property, honor, life itself, for society and government. When society was supreme and the individual nothing, when man was regarded as existing only for government. Hence it was that the government would not excuse a homicide, unless the slayer had retreated to walls, because its police regulations were considered higher, more sacred and holy than the lives of the people. But when a truer and sounder view

on this subject began to prevail, when man's relations to society and government became emancipated from the doctrines and sentiments that dwarfed his individuality and dwindled him into nothing beside the State, when men and judges began to learn something of their own personal importance and feel the promptings of that individuality which asserts its own dignity and importance, when it began to dawn that government was created for man and not man for government, then these old, dry, technical rules began to give way, and to-day the doctrine is this: That if the slayer had reasonable cause to apprehend, and did apprehend danger to his life, or even great bodily harm, the homicide is excusable. That is the law prevailing all over this country. It has found expression in various other forms, but the whole subject will be found to resolve itself into precisely that statement.

(Mr. Syester then, in support of his proposition, read from Wharton on Homicide, pages 228, 229, and 233. Also from Judge Parkins' charge in Selfridge's case.)

Much, indeed I may safely say everything, depends on appearances, more especially when those appearances are created by the party killed.

Gentlemen, adopting the language of an eminent judge in Pennsylvania, in delivering the opinion of the Court in one of the cases I have adverted to, "Look you into the heart of the defendant at the time of the transaction; search out his motives, * * and say whether, constituted as nature made him, he had reason to believe, and did believe, that he was in serious danger." Go with this prisoner, as he went to his humble, ruined home that Sunday night, with his heavy load of shame and bitterness on his heart; stay with him as he wrestled all night long with the hideous beliefs that were ever present in all their deformity before his mind, and, as morning dawned, wearied, wasted, and prostrate, with the presence of a bereavement too fearful for description, he nestles in his misery and wretchedness close to the faithful and now bleeding bosom of her who bore him to the world, and there fell into the short and troubled slumber, from which he was so soon summoned to the contemplation of a woe too bitter, too terrible for description. And let me ask you what impressions do you suppose, respecting the sentiments, dispositions, and temper of McKaig toward him must have been uppermost in his mind. To his apprehension, to his belief, everything that made life valuable had been destroyed. His very name had passed into a by-word of reproach and infamy; the honor and peace of his home and parents were gone, and the author of all this woe, this indescribable wretchedness, had wantonly insulted and manifestly attempted to force him into a bloody and deadly conflict, I doubt not but at that moment the scene at Ferguson's came back upon his mind with a force, significance, and emphasis never before apprehended. I doubt not that the communication made to him by Long the evening before revealed to his distracted apprehension a malignity and a settled purpose to draw him into a deadly issue, far more clearly than you or I, not actors in the drama, can possibly conceive of. Conditioned as he was, these circumstances reappeared to his mind with ten-fold power, and clothed with a hundred-fold more meaning than they did when in a calmer state. They became known to the prisoner, and you see the prisoner, with all these beliefs and all these impressions on his mind, confronted by the man who was the

author of them all. You find that man leaving his side of the street, and before he met him changing his cane from his right to his left hand, and with that right hand reaching back where his pistol was; the same man who had purposely and wantonly insulted him before, who had stood and waited and watched for him, who had destroyed all the green places in his memory, dried up every source of enjoyment, and laid tears, misery, and distraction on his hearthstone. You see that man just in front of the prisoner, the man that he then was to the prisoner, full of hostile, deadly intents, and in the face of all this we are told the prisoner should have waited for more. There was not enough, to his apprehension, to have generated a reasonable belief of serious bodily harm, or death itself. Why, gentlemen, in a case like this, can there be doubt as to what induced the prisoner to fire? If there is a doubt on that subject, by the great, indestructible, and overshadowing principle of the common law, you are bound by your oaths to give the benefit of the doubt to the prisoner. But, be assured, gentlemen, that no common circumstance suddenly transformed that quiet, peaceful, and gentle disposition into a death-dealing minister. No common passion swept that bosom, which had always been the abode of peace and order. No ordinary apprehension overwhelmed that will which, from early childhood and amid the most trying scenes, had ever cherished the sentiments of amiability and gentleness, and had shunned every temptation to violence and disorder. If you are left in doubt, either from the want of direct or the force of circumstantial evidence as to the origin of that deadly encounter, let the history of the prisoner's life, let the gilded volume of his character, let the living memories of his life and its attributes, let these resolve that doubt. If you must receive more satisfactory evidence upon that which the State must not leave in doubt, if you must have assurances on a point to which the State and the State alone must respond, with clear, manifest proofs, if you will go beyond the strict and solemn injunctions of the law, and overleap those broad, deep barriers, erected for the protection of our lives and liberty, and will explore the forbidden fields of inquiry, if you will have it that, by some means, this doubtful matter must be cleared up, if the State shall demand of us that we shall make clear what has been left in obscurity, gentlemen of the jury we do not, we will not shrink from the issue, although the law, of which you are the sworn administrators, does not demand it at our hands. And, in response to such a demand, we point you to the dispositions manifested by the deceased toward the prisoner. We point you to a character on the part of the prisoner the like of which has never before been unfolded to the admiration of a jury. We point to all these evidences, and, by their imposing and substantial power, we confidently await a triumphant solution of that which we are not called on by any law to solve.

I am aware that our friends assume to get over all this by referring you to the prisoner's repeated shots and to his declarations when that bloody scene was shrouded in death. But who shall assume to measure the distance a man shall go when moved by emotions and beliefs such as were sweeping the prisoner along when that encounter took place? Who shall assume to say now, when the whole scene is calmly and dispationately reviewed, and, piece by piece, unfolded to us, who shall assume to say how many shots ought to have been fired and when

the prisoner should have stopped? With the beliefs that were upon his mind, with the appearances that were before his face, he could not, and did not stop while his adversary was on his feet.

Remember, gentlemen, we have all been here for near ten days, inquiring into matters that were crowded up into not more than twenty seconds; and it is preposterous to attempt to point out now what might or could have been seen or known by the prisoner, or to what conclusion he should have come when the interests and investigations of days were all crowded up into an instant of time. Why, gentlemen, do our friends for the prosecution expect that the prisoner, or any other person even witnessing that transaction, not participating in it, to have been so calm and capable of reviewing the different stages of that affair as they, or you, or I am now? Have they forgotten, and can you forget all that must at that moment have been crowding and thronging the mind and memory and stirring the emotions of the prisoner? Can you believe that the overwhelming sense of wrong, injustice, and outrage, which had stunned him and roused all the deepest feelings of his soul, left any place in his mind for deliberation, calmness, or composure?

Is it at all likely, after all he had heard and seen and felt, and in the presence of what was too manifestly before him, he was capable of judging as you and I now may judge, and coming to the same conclusions the gentlemen prosecuting have come to?

Only consider this matter for a moment. You are, all of you, men of respectability, and know the value of an untarnished name, and a pure and virtuous household. Suppose there should suddenly be unfolded to you the story of the ruin of your home, the dishonor of your name, the infamy of your wife, or sister, or daughter, how calm, how composed would you be? That would be revealing to you a sense of wrong, a situation of calamity, more unsupportable than if you had lost every dollar you ever possessed.

Gentlemen of the jury, when the very jewels of our names and household are prostituted into the mere toy, to minister to the depraved lusts of others; when the wife, daughter, or sister has been dragged from her character and virtue down to shame and dishonor; when all society can point the slow-moving finger of its scorn at the home that was once the abode of purity and virtue; when our homes shall be shunned by the pure and blameless in life, and be converted into the very stys of infamy, and there shall remain nothing of them, save the crushing fact that all which gave them their charm and delight, are gone, and gone forever; oh! when such a doom shall overtake our homes, and blacken and desolate our hearthstones—then, then will it be that we can realize, in all its power, the hideous deformity of a woe that, in spite of habit, education, and prayer, shall turn our sweetest thoughts to bitterness, and our best-ordered purposes to madness!

It was from the contemplation of such a scene, of which language can give but a faint outline, that my client had just turned—aye! its bitter waters were upon him, when he was encountered that morning by the deceased. That he had passed that long, sleepless night of misery in distraction, none can doubt. And he was still treading those dizzy, narrow heights, to which he had been swept by the storm of the most fearful of all calamities, and from which even to

look was madness! No! no! he did not, he could not stay his hand, while there remained the slightest chance that his adversary, and the enemy of all that was true and lovely to him, might have power to execute the deadly purpose he had so persistently, so fatally sought.

Our learned brothers affect to draw unfavorable conclusions from the expression used by the prisoner after the body of McKaig lay dead in the street. If such conclusions had been fair and legitimate, do you believe this prosecution would have struggled as it did against the admission of those expressions in evidence before you? You will remember that when I asked Dr. Healey, on cross-examination, to declare all that was said, as well as all that was done, by the prisoner on that occasion, we had a long discussion before the Court as to whether any declarations by the prisoner were admissible. And now, after having warred against this as evidence, our learned friends take it up as one of the very props of the prosecution. Well did these gentlemen understand the force and power of that expression: "Now you will seduce another sister of mine!" "I have killed the man who ruined my sister."

Gentlemen of the jury, may heaven, in its great mercy, spare you and I, and ours, the bitterness of such an expression. I have seen my children cold and shrouded in death. I have stood by their open, their early graves, and have felt all the bitterness and desolation of bereavements, which I thought too hard to bear, and in my anguish and wretchedness have almost questioned the mercy and providence of heaven itself in thus overwhelming me with the waters of bitterness and woe. But I can say, in all truth and candor, that I would welcome them to their graves, rather than behold them before me infamous, ruined, dishonored, and degraded, as this wretched prisoner felt and knew her to be, who, up to that hour, had been to him all that was pure and blameless in life. That the sense of that calamity was uppermost in his mind, and deepest and strongest in his heart, no one can doubt; and it is not to be wondered at, that when death had settled on the overwhelming excitement of that transaction, the remembrance of a ruined home and a dishonored sister should have risen up and to his mind presented itself as all sufficient as a justification for what he had done.

Gentlemen, I can conceive of nothing in life more calculated to excite passion. Certainly, there is no disaster, no misfortune in life so utterly irretrievable; no sorrow so crushing; no spectacle so maddening as that which unfolded itself to the mind of my client. It is absolutely impossible to contemplate the bare possibility of such a calamity with composure. Our minds grow wild and feverish at the bare thought. The purposes become unsettled at the most remote prospect of a bereavement so fearful and harrowing as that. The will shakes in its citadel, and order and reason totter in their strongholds at the bare mention of a destruction so fearful in its desolation, so incurable in its woe!

The learned gentlemen for the State have read law to you, to the effect that there are circumstances and occasions when, on account of the heat of blood, the law steps in and reduces the grade of killing. But we are told that the law takes no account of the hot blood pro-

duced by a trespass like that to which the prisoner felt himself subjected, a trespass on the finest, the noblest, and the holiest affections of the human heart—the sister whose purity you have enshrined as a pure and spotless image in your heart, on whose love and devotion you have reposed from childhood to manhood—she may be snatched from her innocent grace; dishonored before your face; betrayed, wronged, set adrift on the wild and tossing sea of abandoned and riotous passion; shunned, scoffed at and jeered at by the veriest outcast that prowls the streets; and you are gravely told that these laws we live under make no account of the stirring of blood that such a spectacle, such a trespass upon all your love and affection produces! But if two men fall into a drunken brawl, and low and violent passions are aroused by a blow, the law, in tender consideration for the hot blood, heated by brutal, vulgar habits and low indulgences, considers that the death that ensued from such a scene is not murder, but manslaughter. But when the blood is heated by arousing emotions, and inflaming into passion feelings and sentiments that have their seat and origin in the purest and best affections of our common nature, and under such impulses a deed of disorder or death ensues, these prosecutors tell us the jury must take no account of all that. You are walking the street, and a man purposely jostles you there, (and this is one of the very examples read by the prosecutors from 122d sec. of 3d Greenleaf,) and in the heat of blood thus wantonly provoked, you slay the jostler; the law spares your life. But that same man might have entered your household, in all the confidence of intimate friendship, and there ruined your peace and the peace of your whole family, and destroyed everything that was lovely and lovable about it; and if, under the impulses of a woe, too unutterable for human lips, you had destroyed the author of a misery like that, you would be met with a legal presumption, to wit, that you was all the while perfectly calm, absolutely composed, and entirely capable of forming deadly, deliberate, and malicious purposes. A man may strike and scar your face with an unprovoked blow, and you kill him on the spot; but you are not guilty of murder, because these law-books tell us of a weakness of the human heart of which the law is tender, "very tender," so that no malice will be presumed, and the hot blood provoked by the blow reduces the grade of your offense. But that same man may scar your name with shame; he may strike a blow into your quivering heart that shall open up a stream of agony so bitter, so exhaustless, that no time, no consolations can heal it; and if, under the impulses thus wantonly engendered, you kill the author of a desolation like that, we are told that the law makes no account of the emotions and passions that blinded reason and subverted judgment, dethroned calmness, and held the will in thraldom. A man assails you along the road, and attempts to rob you of a fifty-cent government note, and if, in defending yourself from such an assault as that, you kill the assailant; that is justifiable homicide, because it was in defense of your property. But we all stand here with our wives, daughters, and sisters—these priceless jewels of our hearts—all exposed; the practiced hand of any gilded seducer may snatch them from our bosoms, tarnish and degrade them, and then, with scorn and derision, throw them back upon us; and these laws, we are told, declare all that nothing—nothing that you have drained to its

last dregs the bitterest cup that misfortune, injury, and outrage ever presented to unwilling lips.

Gentlemen, let us clasp hands just here, and if it is true that these laws of ours ignore the truest instincts of our hearts, and banish the purest, dearest, and most cherished affections of our natures, let us trust our lives and souls to the mercy of a just God, rather than be subject to such calamities. Let our graves be dug for us all over the land, and let the destroyers of our homes live surrounded by the honors and sustained by the honied commendations of a society that can tolerate principles of law like those I have but imperfectly described. It is a fine thing to talk about the peace, government, and dignity of society, and quite fashionable to indulge in discourses about the order, the law, and well-being of the people; but believe me, neither the peace of the people, nor the dignity of the State, nor the order or honor of society can be preserved under the administration of laws like these. What respect! what reverence! what honor! can a people entertain for a State or society which casts the garments of wretchedness on the wronged, ruined, and betrayed, and leaves them to deal in loneliness and desertion with their sorrows, and at the same time opens all its saloons of refinement, all its resorts of fashion, and all its posts of honor to those whose robes are stained with transgressions, and whose hands are hardened with the ruins they have wrought on the weak and unprotected.

Let no man take his stand amid the ruins of the first, the highest, and holiest laws of human nature, and preach to us about the broken statutes of society and the violated sanctions of law.

Gentlemen, there are laws other that those written in these books, judgments other than those found in the precedents of courts. There are laws, principles, and sentiments as imperishable and indestructible as human nature itself, and which no system of jurisprudence can safely assume to undervalue, and which none has ever yet been able to ignore. There are laws graven on the human heart, by a mightier finger than ever traced the letters of your statutes, and imposed by a diviner sanction than ever fell from human lips; and these laws must be vindicated and preserved at every hazard, for society cannot exist one hour without them. The laws I am speaking of are those which are rooted and grounded in the purest and best affections of our natures, which bloom and blossom under the sacred influences of our homes; which, starting amid the loves and purity of the family circle, broaden and deepen into love of neighborhood, and growing with our growth, and expanding with our experiences, ripen into love of country.

I know that the early law, framed by the Norman conquerors of England, utterly ignored all the domestic affections, and all the sanctities and sublimities of our common nature. I know that these sentiments I am speaking of found no place, no recognition whatever in a system of jurisprudence that was founded on considerations of property alone. They were all excluded by the spirit of an age and the power of a race of conquerors who themselves appropriated the most sacred relations of life to the gratification of rapacity and lust. There was, under the laws set up by the Norman conquerors of England, no law, no punishment for the destroyers of families. Those laws were

molded by the oppressors of the people, the conquering lords and proud, overbearing barons of the manor, who rioted in ravishment and the destruction of homes, and whose ill-gotten and bloated estates enabled them to pay, without feeling it, the slight pecuniary fines imposed as a penalty for violating and destroying the happiness and the honor of the people. Indeed, one cannot turn, without a shudder, to those pages of the old laws of England, where the domestic loves and natural affections, the sacred heatings and outbreathings of the heart are brought into contact with the law. But, after long years of struggle and conflict, these relations and affections, and pure and honored sentiments have been emancipated from the thraldom imposed upon them—they are beginning to take up their proper position among those great interests and substantial considerations on which society itself rests, and are receiving at the hands of an enlightened, moral judgment that high rank and that imposing station which their importance entitles them to. And whatever may be the artificial rules, founded on a view of society existing in the rude and early civilization of England, when the criminal code was framed to encourage and shield the ravishers and destroyers of homes, and not to preserve their purity and honor among the masses. Whatever may be contained in the judgments of the assizes of an age when the husband and the father had no other remedy for the ravishment of his wife or daughter than a writ of replevin to rescue her from the lust and rapacity of some haughty oppressor, nevertheless the judgement and heart of any man, on whom even a glimmering of the civilization of this age has ever rested, will pronounce the crime of that man who invades the peace and sanctities of our homes with the desolations of seduction and shame, to be the most heinous that can stain and blacken the annals of transgression. And whoever assumes to ignore those domestic relations and natural affections, and these sanctities of our common nature, which are so closely bound up with the happiness of the people, the honor and purity of society, and peace and order of the State, whoever, in the madness of his passion and lust shall darken our homes with that hideous shadow which must rest in shame and dishonor on all that we most love and cherish, whoever shall turn the homes of the people into desolate and waste places, dry up all fountains of enjoyment, poison all sources of delight, and leave there nothing but maddening memories, and prospects all blighted and blasted with misfortune, gentleman, such a man is a monster more dreadful, more hideous than the stealthy assassin. Beside such a crime murder itself may clap its hands in triumph. And the State, society, or government that can tolerate crimes like that, or can shield transgressors like these from the righteous vengeance of an insulted, outraged, and ruined people, only mocks you when its representatives prate about order, peace, and good-will among men.

Let no one do me the injustice to suppose that I am undervaluing the common law of the country, or that these remarks are made in sympathy with that wild sentiment which would set up the fanaticisms of partizan strifes in the place of the great principles of security which lie at the foundations of stable, fixed law. Do not impute to me a disposition to withdraw this subject from the imposing sanctions of the common law of Maryland and set it up in the light of those passionate

excitements which are in conflict with all peace, and at open war with all order among men.

I have presented these thoughts for the purpose of exhibiting to you the harmony that always must prevail between the written laws of a people and the living, glowing, and indestructible laws of their nature, not their passions which deprave, but those great, universal, and honored principles which elevate and ennoble the race. And I say that this harmony does prevail, that the common law does not ignore these principles, but takes them up and incorporates them into its own being. For this thing, called the "common law," is not a cold, dead stony incrustation, cramping, and deforming all the developments of life, and holding humanity to the condition in which it existed centuries ago. Treating mankind as endowed with no law of development, and making no room for such development. But the common law is itself a living organism, which expands with the developments of society, keeps pace with its progress, and which, while it looks with no favor on innovations and change, nevertheless takes up and appropriates to its own life whatever experience, reason, and practice shall demonstrate to be true and good, politic and just.

I know that there is a sentiment, which supposes itself to be seated high in authority, and which assumes that it, and it alone holds the peace of society and the order of State in its own hands; a sentiment which, ever and anon, assumes to step down from its lofty place and utter a dignified protest against what it is pleased to denominate principles destructive of society, and subversive of the peace of the State. A sentiment which flatters itself that it is doing high service when it can repress disorder among men, but never heeds the costly sacrifices that smoke and bleed on its altars; and I know that this sentiment will turn away with derision, and a sneer from the thoughts I am feebly uttering, because in its pride and self-sufficiency it will pronounce them pregnant with mischief and full of social discord.

But, gentlemen, when the day shall come, in which a spectacle like that which unfolded its shame and horror to the mind of Crawford Black, on the day he was told of his sister's ruin, shall be contemplated by the American people with no other emotions than those of ordinary regret; when the day shall come in which the faith, virtue, and purity of our wives, sisters, and daughters shall be but the wares with which licentiousness and depraved lusts shall trade and traffic; and the very names we bear shall be but the by-words of scoffing libertines; when our homes, no longer the abodes of virtue, where character is molded into beauty shall become the lurking places where depravity and sin and shame shall hold their stealthy carnivals, in a word, when their lofty breathings of thought and sentiment, which yet enfold and panoply the honor of our families shall be broken down, and wild and riotous passion shall rush in where purity and beauty of character dwells, then will there be opened upon us all the floodgates of a ruin and desolation broadcast, dire, and inevitable. Let me hear no more about principles, subversive of society, and doctrines that uproot its order and peace or impair the dignity of the State of Maryland. For after all, gentlemen, who does not feel and know that tendrils of our serenest joys, and the roots of the peace and

order of society, twine around the thresholds and warm beneath the hearthstones of our sacred homes!

And so long as these homes shall present a quiet and smiling refuge from the toils and cares of life; so long as the purity and virtue and beauty of character of the wife, the sister, and daughter shall remain to welcome the husband, father, brother, and son to their cheerful joys and smiling fireside; so long as the kindly charities of blameless and loving hearts are wreathing amid the hard realities of outer life, a bower of blissful repose; where the jaded and weary spirit may forget the tossings of an ever-heaving present in the holy anticipations of a sorrowless and endless future So long as the quiet dignity of the mother, the twining tenderness of the sister, and the budding loveliness of the daughter blending in one hallowed trinity shall grace the household altar and adorn the household board; so long as these shall remain in all their integrity and conservative and purifying power; so long will the happiness of the people and the peace and order of society remain as firm as the rooted rock.

Disappointments and losses may still occur; but when the pride and heritage of the heart are laid upon the family altar the evils of the outer world are less heavily felt, because they leave untouched the greater and richer interest. The sorrows of death may shroud all life's scenes with gloom, and dash all its cups with bitterness; but while there shall remain to us the precious memories of the pure and blameless lives of those we loved, but whose forms are forever hid, the sweet sacred images which affection loved to cherish will come back—

> "Apparalled in more precious habit,
> More moving, delicate, and full of life
> Than when they lived, indeed."

When those whom we love die with their honors fresh and bright about them, they somehow become omnipresent and immortal to us. Indeed, death brings them nearer to our feelings; raises them to a higher place in our memories and affections, and immortalizes our affections for them.

Moreover, it is always in such seasons of gloom and sadness that kindly hearts are close beside us, to mingle their sympathies with our griefs; and there, too, will ever be found the faith and consolations of our blessed religion, under whose ministrations the loneliest, nakedest grave becomes a sunlit bank, bright and empurpled with the blossoms of eternal life.

"The Lord gave, and the Lord taketh away," has swept down to us through the long vistas of the past, from the earliest dawn of recorded things, and that consolation will continue to abide with the stricken and sorrowing until the last syllable of recorded time. But what consolation can sooth the heart that writhes under the sting of a home poisoned with shame and infamy! If death immortalizes our affections for those we love, infamy annihilates them.

If the prisoner had been told that his sister had died, the loss, though bitter, would not have been baleful, not deadly, for though cut off from the object of his love and trust, he would still have retained those sentiments for her in all their strength and beauty. It was not with

his sister, but with his faith in her that he was forced to part; it was not herself, but her honor and name that was dead forever to him!

Upon such a nature as his, the sadness of a bereavement like that settles into the deep, dark gloom of a wounded spirit, and life will be almost a burden to be borne, not a blessing to be cherished. The dawn of life is around him in all its freshness and beauty; but its morning hymns, and the sweet strains that charm away so many of its sorrows are all silent—hushed in the presence of a bereavement so sad, so painful, that its bare mention is a blighting torture to him. But do not touch that life with your verdict, gentlemen, for it is now doubly dear to those who love and cherish him; the life of this anxious father, who has sat by his side, day by day, during this trial, is more closely bound up with his than ever. And the same faithful bosom on which he wept away the transient sorrows of his childhood, now yearning toward him with more than a mother's love, awaits your verdict to enfold him with its boundless affections, and administer its consolations to this crushing bereavement of his riper years. You cannot be insensible to the fact that your verdict is looked for with no common interest.

It is not simply that it will give life or death to this prisoner, and joy or sorrow to the anxious hearts that here cluster around him; but it is because profounder issues than the life or death of any man are embarked on that verdict, and considerations far more important than the joys or sorrows of his friends stand thick and trembling around this case. That verdict will give us to know what estimate a Maryland jury places on the honor and securities of our households, and how dear they hold the loves and affections which bloom and ripen under the roofs of the unnumbered houses of this happy land.

There is not a home in all this broad land that will not feel the rude touch of a verdict which consigns this prisoner to the grave, startling into dismay the joys and nameless benignities that nestle amid its loves and affections.

There is not a brother whose faith and trust have reposed amid the pure delights and tendencies of a sister's love, who will not feel, in the death of this boy, under this prosecution, that a frowning shadow has fallen and rests between him and the purest memories and most sacred recollections of his life.

Your verdict will stand a monumental point in the history and recollections of this people. "Nor marble, nor the gilded monuments of princes" shall outlive its powerful influences for good or evil. It will stand the living record of your memories, and tongues to be-that verdict shall rehearse when all the breathers of this world are dead.

There can be no room in your finding for distinctions as to the grade of homicide; under that finding the prisoner must live or die. If the prosecution is right he must die; if wrong he must live and be free. The issues of life or death are as distinctly staked upon your verdict as they were when the prisoner stood face to face with the same awful issues on the morning of the 17th of October, 1871. But, notwithstanding the power and determination of this prosecution, I still cling to the hope that your verdict will release him from the long imprisonment he has

endured, and restore him once more to the hopes and trusts that are embarked upon his character. And, seeing that his early life is so clouded with misfortune and gloom, I am sure you will join with me in the earnest hope that, in his later days, when the evening rays of life shall fall upon him, he may not be found to give forth the same mournful strains that have so sadly greeted the early messengers of his morning.

Hon D. W. Voorhees

ARGUMENT

OF

HON. D. W. VOORHEES.

GENTLEMEN OF THE JURY, we have now reached that point where it becomes my duty to address you. In doing so, I have but one thought and but one purpose. I believe, with fixed and solemn convictions, in the innocence of the young prisoner who is here by my side, and I shall try, while I stand before you, to make manifest the grounds of my belief, and to the utmost extent of my humble powers, to obtain for them the consent of your minds.

Allusion has been made to my position as counsel here. It is true that I live in a distant State, but I cannot feel that I am a stranger to you. We are allied to each other by many ties. We are husbands, fathers, and brothers. We have wives, sisters, and daughters. These vital and precious domestic relations form all mankind into a universal holy alliance. By them you and I are acquainted. We understand each other by their promptings. Let us come close to each other in this discussion. I can have no purposes that ought not to be yours. As a citizen of this great country, desirous of the welfare of the people, desirous of the supremacy of the laws, I cannot invoke any results that you ought not also to desire. We are all wedded to the public good. We do not want to destroy the peace and good order of human society. None of us are interested in such a baleful issue. Good or evil to you and yours is the same to me and mine. A blow at your peace and homes is a blow at all the homes in the land, and an assault upon the humblest family circle puts in peril everything that we all hold dear. We meet, therefore, upon a common level, and in a plain and simple manner I expect to speak to you in this spirit.

There is one consolation that I have in rising to address you that presents itself to my mind at once. I have stood before juries quite often, but never before, in the whole range of my experience, have I known a man arraigned for murder who produced such a record of character as has been produced here. All the powerful presumptions of a virtuous and well-spent life arise at the very opening of your deliberations in favor of the defendant. By the light of the proof let us see who it is that we are trying. You have your fingers on his pulse. You are measuring his life, and the manner of that life is all before you. He is young—but twenty-four years of age. How much of usefulness and manly life he has crowded into that brief space! If one of your sons of that age was arraigned for a high crime, how proud you would justly feel if you could call, as has been done in this

case, from every quarter and from every class everybody who had ever met him, everybody who had ever done business with him, and receive from them all one unbroken strain of commendation and eulogy! The aged and gray who have known Harry Crawford Black from his infancy, have here, in your presence, praised his pure and blameless life. His young comrades have spoken of him as an example far beyond his years. His fellow prisoners during the war describe him as a model amidst the hard and demoralizing scenes of prison life. The dusty miners from Piedmont, as well as Members and Senators in Congress, come here to bear their voluntary and affectionate testimony in his favor. He does not pass this ordeal alone; he has the sweet reward of virtue in the presence and consolation of those whom his good conduct has attached to his fortunes; and the voice of reason, as well as law, proclaims that such a man is not a criminal. He is not familiar with the walks of vice, where criminals are made. His hand and his heart are free from the guile and the practice of crime, and yet the learned gentlemen for the prosecution insist that he stands now at the foot of the scaffold, soon to ascend its desperate heights for the commission of a crime without a parallel in the eye of the law. Pure, innocent, and virtuous up to this time! Do men of that kind, without just provocation, enact deeds of bloodshed? If they commit what seem to be violations of law, are they not always upon the most dreadful and imperative causes? It is this presumption which gives to character its priceless value when the motives and conduct of a human being is under investigation. But such a reputation as the defendant here produces is usually the growth of a long life time, and is seldom the accompaniment of early youth. Recall in your minds at this moment the friends and neighbors by whom you are surrounded at home. The best and most reliable are those of longest standing. Some you have known for more than a quarter of a century. You have seen their heads whiten as the winters and summers have come and gone. Their characters are good and solid. Little by little, day by day, week by week, month by month, they have built them up as firmly as your beautiful mountains; but it has been the labor of long years. How much more should your hearts lean to a mere boy, who has not had much time, and yet comes into court with a character that the old men of the country might be proud to produce. He has had but few years, but in them he has been so prone to virtue, so free from vice, so free from evil associations that he has not a spot or stain or blemish. Show me another boy in these bright valleys who went from home at seventeen years of age, had an army experience, always terrible, tasted the horrors of the prison-house, came out untainted in soul and body, went to the far West into the employ as chief clerk of a heavy mercantile house, returns with their warmest testimonials, becomes at twenty-two the superintendent of one of the foremost mining companies of the Alleghanies, winning at all times and places and circumstances golden opinions, and nothing but golden opinions, from all sorts of people; show me, I say, another boy like this beside me within the range of your acquaintance who has borne or can bear the mighty tests to which the prisoner has been subjected, and you will find him the cherished object of universal regard, beloved by the fathers and welcomed by the mothers into every domestic circle as a model for their sons and an associate for their daughters. Can the

mark of Cain rest upon the brow of such an one? Can the ineffaceable brand of bloody guilt be there? Such an assertion is a perversion of all the laws of human nature. The tree shall be known by its fruits; the thorn and the thistle do not bear delicious figs, and a life of innocence and peace does not bloom and ripen of a sudden into a harvest of atrocious crime.

If we were defending, indeed, a criminal, one whose character we did not dare put in issue, with blotches and stains upon him, how different would be our feelings and our positions. But now we come with all our hearts clinging closely to the defendant in his peril, believing, earnestly believing in him and in his innocence from the very depths of our souls; and we have no fear. The weight of a good name is recognized in the books of law, but over and above all it is recognized in your own hearts. When the Hebrew children were cast into the furnace, with its seven fold heat, there appeared to the astonished gaze of the Babylonish king another form, of celestial aspect, walking with them in the midst of the flames, and comforting them under their fiery afflictions. So is Crawford Black's good name this moment hovering near him, like a beneficent angel, to guard, to bless, and to protect; and when he emerges from this trial his raiment will not be scorched nor have the smell of fire.

Gentlemen, mention has been made of the change of venue in this case. I have something, also, to say on that subject. The McKaig's are a powerful, able, intellectual, and wealthy family. That family, with its numerous connections, represent, I am told, more wealth than any other five families in Alleghany county. The prisoner has no means of his own, and no kindred nearer than cousins who have. He is poor, and so is his father, and, except through distant kindred, he has not a dollar to aid him; yet he was so strong in the community where the deed was done, and his defense sprang up so powerfully in the hearts of all, that the influence of the McKaig's melted like a mountain mist before the opening dawn. They dared not meet this stripling youth at their own homes. They fled from their native heaths. There these two young men were born; there they were raised; there one was slain and the other awaited his trial. Upon the side of one is numerous kindred, strong, accomplished, intellectual, and full of life and power. On the other is merely a good cause and a good name; nothing more; and yet what a scene I witnessed in January last in the county of Alleghany! I never beheld the like before, and hope never to again. I saw an American State seeking to convict a man of crime, though afraid to put him upon his trial where the alleged crime was committed. It was his right there to be tried. My associate counsel has read to you the constitution of Maryland, with its bill of rights. It is there declared that one of the principal rights of the citizen is to be tried where the facts arise. When our forefathers alleged the causes on which they fought King George seven bloody years, they laid down as a marked grievance that he transported American citizens beyond the seas to be tried for offenses committed here. It was one of the prominent causes for which our fathers bled, for which Smallwood's Maryland regiment charged on the battle-fields of the Revolution. They fought for the right of trial where the offense was committed; the right to be tried by their peers and neighbors; the right to be tried where witnesses are known. The counsel

for the prosecution in this case seek to invalidate the testimony for the defense. How dare they assail men in this community whom they were unwilling to confront in Cumberland, where they are fully known? Gentlemen, they ask you to do what an Alleghany county jury would not do. They come away from that county and ask you to do a deed of horror that no jury there would commit. How stands this case? The State of Maryland says: "Alleghany county acquits the prisoner, but we ask Frederick county to convict him." He has already one verdict of not guilty in his favor. The State said Alleghany county would not convict him; thereupon a change of venue was taken. It amounts to one verdict of not guilty. It is a confession on the part of the prosecution that the county where he was born, where he was raised, and where McKaig was born, where he was raised, and where he fell, will not convict the defendant.

The attorney general spoke of the scenes of Colonel McKaig's funeral in Cumberland—that the stores were closed and mourners went about the streets as if a great public calamity had befallen the city. If this dramatic picture is true, if there was a deep sense of wrong and outrage in the breasts of the people against Black, why is he here for trial? If stores were closed, if there was burning indignation, if there was grief over the loss of an unoffending citizen, why are we not all in Cumberland, rather than in Frederick? What did this prosecution flee from? Why did it flee at all? It fled hoping to hide from a jury the true causes of this disaster. The public mind was too full of knowledge where all the facts were known. The very air was full of the wrongs inflicted by the deceased upon the defendant and his family. It was too well known by the entire people that there was one desolate home, one ruined daughter, one frantic father, one broken-hearted mother, and one outraged, insulted, and menaced brother and son in their midst. The witnesses by whom we have proven McKaig's assault upon Black on that fatal morning were also too well known in that community to suit the purposes of the prosecution. This prosecution fled from another fact. A jury in Cumberland could inspect the premises and examine the ground where the collision took place. They could see the exact position these parties bore toward each other; they could determine where McKaig came from, where he was, how he crossed the street, whether there was a natural crossing there, and that Black did not seek him by crossing the street, but that McKaig sought him. All that could be seen by the jury there, and all that we loose by being brought here. This course upon the part of the prosecution is virtually a *nolle prosequi*. It amounts to a dismissal, so far as the county of Alleghany, where the trial properly belongs, is concerned. In my judgment, this law that allows the State to drag a prisoner from his home for trial, to transport him from the location of his conduct, is unconstitutional, is not in accordance with the Constitution of the United States, nor the constitution of Maryland. I believe whenever this question is raised, and the law tested, it will be so decided.

But we come now to a close and patient examination of the facts in detail of this sad and dreadful tragedy. I will ask you to start with me on Saturday evening at Piedmont, next preceding the fatal Monday morning. There, to my mind, the curtain first rises bringing the prisoner into mental cognizance of the deceased on the subject which has wrought such wide-

spread ruin. Black and his friend Henshaw were together. Henshaw, not liking to intrude upon such a subject, yet ventured to ask whether the father of the prisoner had yet been indicted. The answer was that he had not. "I thought he would have been," said Henshaw. "Why so?" inquired the prisoner. "Because," said Henshaw, "of what occurred on the fair ground." "Well," says the prisoner, "what did occur at the fair ground? I have never been able to get the truth of that. Father was not in a condition to remember, and mother will not talk to me about it." Henshaw then informed him that the deceased, Colonel W. W. McKaig, had publicly denounced the sister of the prisoner as a strumpet on that occasion. These were the burning, awful words for a brother's ear to hear and heart to feel. They wrung from his pale lips one brief exclamation of agony; he changed color rapidly, and his breast heaved with strong excitement. He grew silent, and with an ashen face invited no further conversation, and Henshaw attempted no more. He disappears from our view for that night. His tortures are not for us to fathom. In hours of darkness and deepest woe the heart has no confident this side of Omniscience. How that wretched night was spent there is no proof to show, for it passed in solitary despair. The next day dawns on him in Cumberland, now intent on solving the painful mystery connected with his sister. We find him immediately in conversation with Mr. Lowndes, a relative by marriage, and a gentleman of the highest character, and a member of the legal profession. Was he not a most proper person of whom to make inquiry, and with whom to advise? Mr. Lowndes not only confirms the statement of Henshaw in regard to the language used at the fair ground, but also informs the prisoner that Colonel McKaig is the seducer of his sister. This is his first information as to the author of his sister's shame and ruin. It is true that he suspected she was in trouble—she was absent from home—but who was to tell this young and hopeful spirit that the idol of his childhood was worse than dead to him? His parents were silent on the dreadful theme in his presence. You heard the stricken and sobbing mother on the witness stand. With tearful eyes and voice she told you that the wrongs of the sister were never mentioned to her brother; that it was a forbidden subject in the little circle of home upon the occasions of the prisoner's brief visits from the mines in the mountains. It was kept, as far as possible, a sealed book to him; nor is this any new phase in domestic life, or in family histories. How often do we read of one portrait with its face to the wall and its name never mentioned. It is, perhaps, the image of one who, though deeply loved, has planted sorrow and shame in the hearts of the household. The name is to be spoken no more forever. We can speak with a saddened pleasure of the dead who sleep in purity and honor. The memory of their virtues fills our hearts with love and peace, and we train white roses to bloom on their graves. But for one on whom a blight has fallen, beside which the touch of death is merciful, we invoke a deeper silence than the tomb. There is a gallery in Venice where the faces of the Doges of ancient days adorn the walls, but the eye suddenly rests upon one vacant panel—no portrait is there. He who should have filled it is blotted from the walls of memory. He fell in an hour of temptation from his high estate, and an oblivion was extended to him by his own and succeeding ages. And so, when the poor, deluded girl in this case fell

into the snares of the spoiler, and the knowledge of her wayward steps came partially to her suffering parents, they strove to draw an impenetrable curtain around the horrible event; and most of all did they wish to conceal the humiliating and harrowing truth from their son, their only remaining child—their staff and hope in the gloomy and desolate future. His life was dawning with auspicious omens; he was rising rapidly in business; his prospects were brilliant, and well might the father and mother be reluctant to mar them with a grief that always ranges in noble natures close upon the confines of madness. They were journeying towards the sunset of life, and wished to bear their burden alone. They sought to spare the prisoner in the bright morning of his existence this bitter cup of which they drank in solitude, and whose wretched dregs they are now draining in public. It was the sublime struggle of deep parental affection and fortitude under the darkest calamity that ever blasts the peace of a home. Their conduct was true to the loftiest instincts that ever adorned the annals of human nature. And so it was that the prisoner, on Sunday, for the first time, and from the lips of Mr. Lowndes, learned of the awful abyss into which his sister had fallen; who had led her trusting footstep to the brink, and hurled her into its frightful and remorseless depths. The letter in evidence was at the same time shown him, and he was reliably assured that it was written to his sister by the deceased. It conclusively proves criminal intercourse. The writer speaks with an easy and familiar sense of power over his victim. She was plainly the subordinate of his wishes. All this penetrated the heart and brain of the prisoner at a glance. The facts were accumulating upon him with startling rapidity. The night before he had learned of the defilement of his sister's name on the public fair grounds; on this day he was informed that the very man who had hawked her name as a harlot in the midst of gaping and wondering multitudes was himself the author of the ruin and dishonor which had befallen her, and which he thus proclaimed. The written proof was placed in his hands. He went next with Mr. Lowndes to his mother. If he hoped for comfort there, for once, at least, he did not find it; rather he found the revolting climax of his misery, shame, and horror. It was disclosed to him that a child, four months old, was then in his sister's arms, at her distant place of retreat, as the result of the treacherous embraces of the deceased. Oh! gentlemen, no tongue can paint the force of this last blow upon a heart already bruised, swollen, and bleeding. The pride of the prisoner's young life—his pride in an honored and unsullied name, in the ties of home and kindred, in the friends he had won, in the career opening before him, was overthrown and trampled in the dust by the haughty and insolent tread of his sister's seducer. At the prisoner's time of life, and with such a nature and reputation as his, how sensitive is the human mind to dishonor! And the fame and good name of mother and sister are then more precious than all this world contains and than life itself. In after years, wife and children may divide the bounties of love, but to the pure and upright son and brother who has not yet left the hearthstone of his childhood, the mother that bore him, and the sister who has grown up by his side, are the tender and cherished objects of all his earthly devotion. It was so with Crawford Black. He felt in a moment all the agony of a whole life suddenly wrecked and covered

with disaster. Everything crumbled to pieces in an instant. Hope died, and despair took its place in his breast; his bright dreams of the future disappeared, and a wall of darkness rose up around him. The sky, so clear before, grew black over his head; he felt, too, that all the world knew the story which was consuming his heart with bitterness and grief. It had been proclaimed by him who best knew its fearful truth. The finger of scorn is a more dreadful instrument of torture than the cruel ingenuity of man ever devised, and the prisoner now knew, for the first time, that it was upon him; that he was pointed at as one on whom the brand of a sister's degredation had been placed by the successful arts of triumphant villainy. In this mood of mind he witnessed the close of that eventful Sabbath day. To others it had been a day of rest; not so to him. To others it had been a day of grace and of blessings; to him it was full of curses and of evil; the darkest day in all the calendar of time. And when night came with its healing influences for the weary and sore-hearted, it brought no oblivious antidotes to pain for this unfortunate prisoner. Who shall tell of the scorpion stings and lashes of that miserable and sleepless night? You have caught glimpses here and there from the mother's testimony of the dismal hours as they slowly passed away. They were laden with the baleful ingredients which kindle a frenzy in the soul and a madness in the brain. Gentlemen, have you ever passed through the deep floods of sorrow? Have you ever walked the floor through the silent watches of the night, praying for the day to dawn, and feeling that the wings of time were loaded with lead? Have grief and woe ever affrighted sleep from your eyelids and rest from your hearts? But yours, perhaps, has been the sorrow which comes of death and ordinary bereavement. Here was the blister of shame burning like a hot iron on the prisoner's brow, and a sense of disgrace like a corroding, cankering poison inflaming his brain with a fever which no medicinal drug can allay or cool. The art of the healer stops at the threshhold of the diseased mind, and sinks down baffled and helpless in the presence of the delirium of woe. Toward day, when all the world was dark and lost to him, when the precious providences of God themselves seemed blotted out like stars in the midst of clouds and storm, he turned his weary steps toward that love which never falters or grows dim, which triumphs over dishonor and death, and shines brightest amidst the wailings of broken hearts and the ghastly ruins of domestic peace and joy. He threw himself by his mother's side to comfort and be comforted in their mutual misery. He laid his bright and manly head where he had slept the placid sleep of infancy. There, sobbing and oppressed, he sought a shelter. The pitiless and merciless storm was pelting him, and "other refuge had he none." Mother and son wept together over the erring and the lost. There is often a mercy in tears, but not in such as are shed over a loved one ruined in soul and body. Then the unsealed fountains are scalding and bitter as the waters of Marah. While the parent and child thus lament together we will turn from this scene of holy pathos and tenderness and consider an important question which here arises in the order of my argument.

You have been asked, with earnest emphasis, by the counsel for the prosecution why the prisoner was so crushed and appalled with grief and frenzy against the deceased. You are reminded that we were not

allowed by the Court to prove the direct fact of the sister's seduction by McKaig. You will remember our urgent offer to do so, and the determined opposition to such proof on the part of the learned gentleman for the State. The Court held in your hearing that the information which the prisoner received on that subject was competent evidence, but that the fact itself of the seduction was not an issue before you. Was he informed upon competent authority? Had he a right, as a reasonable and prudent man, to believe that Colonel McKaig had seduced Myra Black, and that she had borne a child as the result of their sinful intercourse? Did the facts, as communicated to him, justify such a belief, and did he entertain it with the deep convictions of an honest sincerity? If so, then his sister's ruin by the deceased became a proven, fixed, and absolute reality in his mind, as much so as if his eyes had beheld or his ears heard the secret deeds of shame over which the deep spell of silence reigns forever. If he believed, then his mind was wrought upon by the power of a sincere faith. His emotions and his conduct were under its omnipotent influence; and in this respect he simply conformed to the great laws which have governed all the races and tribes of mankind since the birthday of human history. You and I believe in the great and merciful Father in heaven, the creator of the boundless universe, yet we have not seen him, nor hath any man and lived. We believe that the blessed Saviour walked the hills and plains of Judea, and died to redeem the souls of men, but our eyes did not behold the majesty of his face, nor our ears drink in the deep and melancholy music of his voice. We believe because we have faith in the sources of our information. We have been told, that is all. The testimony of the ages is ours. Nature throughout her illimitible realms proclaims a God, and the Bible, the Book of books reveals him; while the existence and the divine mission of the Messiah are established by witnesses whose evidence we read and accept as true. Upon these sources of faith Christain men and women found their hopes of immortal happiness. They make Heaven an immediate reality, and uphold the martyr as he smiles joyfully amidst the blazing faggots at the stake. Nor is the power of human belief over the actions of men lessened because it may be founded in error. The untamed Indian has his faith as we have ours. He has not seen the Manito, but his trust in the happy hunting grounds, the sparkling rivers, and the fadeless verdure of an eternal world is as unfaltering as the bravest disciples that ever died for the cause of the Cross. He sings his death song under slow tortures, recounts his earthly deeds of merit and anticipates his blissful rewards hereafter with all the calmness and confidence of a Christian philosopher. The eastern Mussulman worships with sincere devotion at the shrine of Mahomet, and giving full credit to the testimony of his fathers, follows the Crescent and rejoices in the prospect of a sensual paradise at the end of life. The Chinaman, the countryman of Confucius, has a faith in his system equally firm and unrelenting. The history of the whole human race forces us to exclaim, how little is known and how much is believed! The world of faith is wide, the world of knowledge is narrow. What we think we know best depends mainly upon the credibility of those who have narrated to us the facts. How few of you have crossed the mountains and beheld the valley of the Mississippi! Yet you know that there it lies, stretching from the regions of perpetual snow to the

land of unending summer, an empire of present and future wealth and populations. What one of this jury has ever beheld the great father of waters as he rolls onward to the Gulf of Mexico? Yet you all know that the ceaseless and resistless current is forever there. You have listened to the tales of travelers; you have read their letters and their books, and you are convinced as fully as you could be through the medium of your own senses. I only ask for the prisoner that these universal rules of faith be extended to him in this dark hour of his peril. I do not ask you to shield him if his belief was irrational and unnatural—if he accepted information from unworthy and unreliable persons. Put yourselves in his place; could he doubt the truth and candor of his faithful and tried friend, Henshaw? Could he distrust his kinsman and advisor Lowndes? But above all, were not the words of his idolized mother sacred and holy with him? No better, surer foundations of human belief ever challenged the consent of the human mind. Crawford Black as much knew, by the time the sun set on Sunday evening, that McKaig had destroyed his sister as it is given to mortals to know the affairs of this life. No doubt or misgiving for a moment mitigated his anguish. The awful fact stared him in the face with painful and maddening intensity. It confronted him incessantly. It would not down at his bidding. It taunted and mocked him in his sleepless desolation and despair. It tempted his imagination with the appalling details of the victims' surrender and debasement, and the destroyers triumph and insolence. And if he arose and acted upon this fact and slew the man who had put out the light and joy of an innocent and unoffending household would his conduct have been without precedent, novel and strange in the history of mankind? There is a very old case and of very high authority on this point. It is the earliest on record. The daughter of Jacob was seduced by a prince of one of the neighboring tribes. Her brothers, Simeon and Levi were in the fields at their usual avocations, when they were told by others of what had befallen their sister. They believed the story of their disgrace, and with their swords, in due time, they acted upon it to the total destruction, not merely of the seducer, but of the whole tribe who supported him in his conduct. And when their father, who was old and apprehensive of trouble growing out of their terrible vengeance, deplored their fierce and sanguinary measures, they gave that memorable answer which has sprung to the lips of manly brothers in every age and clime from that hour to this, "Shall he deal with our sister as a harlot?" Human nature is the same to-day as it was then, and Crawford Black simply exclaimed with Simeon and Levi of old. You would cry out in the same indignant words under the same circumstances. You are now asked to punish this young brother in Maryland. Were the brothers in Israel punished? God ruled immediately and directly in the house of Jacob. Are you wiser and more just than your Maker? Will you sit in judgment upon the Almighty and condemn his ways? Should you not rather find out His rulings in a case so similar to the one you are trying and then implicitly and humbly adopt them for your guidance? The patriarch and his family, including the two defenders of their sisters' honor, were led by Jehovah out from among their enemies, up into Bethel, a place of safety. "And they journeyed; and the terror of God was upon the cities that were round about them, and they did not pursue after the sons of Jacob." They were thus protected, not prosecuted.

I may cite other cases hereafter, but with the approval of God upon the conduct of the prisoner, I know that I might safely leave this branch of his defense where it now rests.

Gentlemen of the jury, the light of Monday morning at last broke over the hills of Cumberland and brought that dreadful night to a close. The sun of the morning comes with life in its beams to all. It illuminates the hovel and the palace; the home of the heart-broken and the circles of gayety and pleasure. In all its kindly visitations of human abodes, however, on that morning it lit up no lonelier, sadder, drearier hearthstone than that around which once shown the pure and innocent face of the beloved daughter and sister, to be seen there with the angel light of virtue no more forever. The prisoner went forth from that blighted home, and the hour of retributive justice drew nigh; not by his artifice or device, but by the spirit of the avenging Nemesis who sooner or later overtakes the violaters of domestic sanctity. His provocation was already sufficient in the estimation of all the ages of the past to justify the death of McKaig. While he stands, however, on the brow of the hill, and before he descends, weary and heavy laden into the town, let us examine still more closely into the relations which the deceased and the accused bore to each other. What were the purposes and feelings which McKaig had deliberately and repeatedly evinced toward Black? One of the oldest and basest principles of human nature was at work in the heart of the deceased. He had wronged the prisoner beyond the reach of forgiveness, and he therefore hated him. The scandal, too, of his conduct had become public and he thought to browbeat all complaining voices into silence. His own domestic peace was doubtless in peril, and it was necessary to overawe the injured family into abject submission. He had met the insane and frantic father, and received an assault vaguely mentioned here in the evidence. No danger or menace, however, threatened him any longer in that quarter. The forbearance of the distracted father was secured by indictment and heavy bonds. There was but one other who held the honor of the name and the household in his keeping. It was the brave, generous, dauntless being here before you, and it was for him that McKaig wore his daily belt of loaded fire-arms. Conscience told the deceased that he had forfeited his life to the prisoner. He would have slain the seducer of his own sister like a dog in the highways, and the guilt in his breast bade him beware of the brother of his victim. Perhaps, friendly tongues had also warned him of his danger if the accused ever made a full discovery. Thus steeped in crime I shall demonstrate from the evidence that he sought a collision with Black under circumstances of his own choosing, and with the advantages all in favor of himself. He could not retrace his steps and undo the wrongs he had inflicted. He therefore prepared to go forward and wade in blood to a place of safety; a place of security, as he supposed, against the consequences of his own evil deeds. He believed the issue would come, and he became restless and agressive in order to have it no longer pending. Why else did he rudely jostle the prisoner in Ferguson's saloon? Between friends such an act might pass without significance; but when men are deadly foes;

when their hostility is open and proclaimed; when unpardonable wrongs have been given and received; when their blood is full of wrath; when the insulter is armed with weapons of death, then the intentional touch in passing is a threat and a challenge of the deepest and most sinister import. What Lawrence Wilson saw has that meaning and none other. It was McKaig's palpable purpose to provoke Black into a fight at a time and place of his own selection, and with his preparations doubtless fully made. Wilson is not contradicted. He located the place and fixed the time and mentioned the presence of others on the occasion. The barkeeper was especially identified. If this evidence was untrue; if the deceased and the prisoner were not there at the time named; if the circumstances of insolence and assault did not take place as described, the means were amply furnished by the witness himself for his detection and contradiction. If it was a fabrication it would have been demolished longer ere now. There is power and wealth and the thirst for revenge in this prosecution, and no great fact like this would be left standing if it could have been overthrown. It occurred but two weeks before the fall of the deceased, and throws a full flood of light upon his movements and motives at the final and deadly encounter. Its importance in this case can not be magnified. It is uncontradicted, and, therefore, conceded that when these two young men are first brought to your view together the deceased was the hostile aggressor seeking to degrade or slay the brother as he had worse than slain the sister. How much longer was Crawford Black to endure? How much more of the proud man's contumely was he to bear? But the hour had not yet come; he knew not yet the full story of infamy which afterward filled his soul with horror.

But there is yet stronger and more striking evidence of McKaig's deadly purposes toward the accused. John Long, born and reared in Cumberland, well known by all, detailed a scene upon the witness stand that will never be forgotten by those who heard it. It is said that the deceased was a brave man. It may be so. I have no doubt he acted with courage in battle. Many have done so, surrounded by admiring comrades, inspired by hopes of distinction, who have faltered in the face of a personal conflict; especially so when not upheld by the consciousness of right. He who hath his quarrel just has a contempt for danger which the heart oppressed with guilt never knows. A troubled conscience makes many strange and devious steps. Many actions that are mysterious to the world would be thus explained if the secrets of all hearts could be laid bare. When John Long saw McKaig watching the prisoner at that street corner with his hand on his pistol, he was but acting in obedience to the hard necessities of his criminal position. The consequences of his evil career were developed in his own character. His own nature was depraved and perverted until we see him by the light of this evidence, lying in wait meditating what measure of destruction he should next adopt against this unoffending family. It gives me no pleasure to speak these words. The truth is painful to me when it reproaches the dead, but the claims of the living here in this court-room cannot be denied. What the immediate intentions

of the deceased were while he was waylaying the prisoner, you and I may not fully determine. He may not have entirely comprehended them himself. To my mind he appears on that occasion irresolute, undecided, wavering, and halting between the conflicting purposes of his own disturbed and agitated breast; at one moment strongly impelled to confront and assault the prisoner, and the next hesitating and doubting, until the opportunity for decisive action went by. But an effort has been made to discredit Long. In what way? He is a native of Cumberland, and there grew up to manhood, and though his face wears a darker color than yours or mine, yet no man dares to say in your presence that he has not borne as good a character for truth and veracity as the loftiest and proudest in that community. Although hundreds of citizens of Alleghany county have attended this protracted trial, and hundreds more could have been obtained in a few hours, yet no impeachment of the reputation of this well-known and vitally important witness was attempted in the remotest manner. This is equivalent to the affirmative support of his credibility by the entire community in which he lives. But at the last moment two zealous colaborers in this prosecution rushed into court and lifted up their hands and voices to contradict John Long—Dr Dougherty and Smith Johnson! Both admit that they are partisans in feeling against this unfortunate young man, who has never harmed them by word or deed. They tell you that two nights ago, in the dim still hours between midnight and day, when the evil and prowling spirits of the known and the unknown world usually commit their nocturnal freaks against the peace of mankind, they inspected and surveyed the localities described by Long, decided there in the dark that he could not have seen McKaig where he swore he did see him; took the cars in haste for this city and arrived just in time to detail their astounding discovery before the testimony in the case was finally closed. Long was examined more than a week ago. There is a line of telegraph and a railroad from here to Cumberland, and there is a venomous energy and power in this prosecution unparalleled in my expeperience. If Long was false and the locality itself as given by him would expose his perjury, would his contradiction have been left to the finishing details of the case and to the ridiculous testimony of Dougherty and Johnson? No! Scores of men would have been promptly produced, having made careful daylight examinations of the points in dispute and ready to tell you that this great, gigantic fact established by Long was impossible from physical causes. Gross and Ferguson, the proprietors of the saloon, and familiar with the corner where McKaig was seen, with the spot where Long stood and with the positions of the lamps that have been mentioned, would have been the most competent and proper witnesses on this point. Why were they not called instead of these hasty, prejudiced, midnight surveyors? John Long might and would have been contradicted if his statement had been untrue, but he stands here now uncontradicted and unimpeached. Let the doctor, therefore, assuage his feelings in the use of his scalpel and pills upon his patients, and let him and Johnson both hereafter abandon the business of willing and anxi-

ous witnesses against an innocent man on trial for his life. If they are satisfied with their appearance in this sad drama, I will now drop the curtain, while the audience hoots and hisses them out of sight and out of mind

But again; Long was faithful to his early playmate and friend. On the distressful Sunday, when the fearful truth was rapidly breaking upon the distracted mind of the prisoner, John Long met him, as he told you, on the bridge in Cumberland for the first time since he had witnessed McKaig's secret menaces a few days before against his life. His inquiry of him was most natural—"When did you see Colonel McKaig last?" Crawford Black's heart was bitter and sore at that moment. The sound of that name maddened him. His reply to the faithful boy that loved him was stern and angry: "What is that to you?" Grief and humiliation have their right to solitude and exclusion, and the prisoner repelled what he took to be an attempt to invade his confidence and look upon the bleeding wounds of his miserable heart. Long corrected his mistake, and narrated to him the recent strange and threatening behavior of McKaig. He put him in possession of every detail. The prisoner listened, and left in silence. He now knew not only that his sister had fallen, but that his own life was hunted. Dishonor had already come, and death was pending. His sister led to her ruin, and then advertised to the public by her destroyer as a common bawd, his aged father reviled, and denounced and prosecuted as a felon for his feeble and vain attempt at redress, and now thoroughly convinced that he himself was to be watched, threatened, glared at, bullied, waylaid, and eventually subjected to deadly assault! What more of outrage and provocation can man submit to unless, like a hound, he receives the kick and the lash of his master? Bear in mind that meeting on the bridge and Long's statement. Do not for a moment forget it. Invoke it into your presence when you retire, for with such a notice as he then received the prisoner had the right to kill the deceased whenever he approached him with the slighest evidences of hostility in his movements. No retreat, no delay was after this required of him. Henceforth if he slew McKaig he had a double defense; each one as sure and firm as the everlasting hills. His sisters's cause and his own united in their appeal, and the spirit of his noble manhood responded; a volcano justly raged within his breast, and Providence dictated the moment of its eruption and the result which followed. The burden of the prisoner was more than he could bear, and he moved and acted as an instrument in the hands of a just God. You are to judge of his conduct as if you had been in his situation. That is your duty to-day. I state it in the hearing of the Court, and in the presence of my profsessional brethern. You are not to estimate his guilt or innocence by the appearance of the circumstances to a cool, indifferent, and disinterested observer. You are to put yourselves in his place, assume his relations to others, imbibe his affections, and survey everything from his point of view; stand with him on the brow of the hill, near the old homestead, where I left him some time ago; recall to your minds all that he then knew of McKaig's conduct in the past, and of his purposes

against himself in the future, and answer in your hearts whether the wealth and honors of the whole earth would have tempted you to embrace the prospect that lay before him as your own. You cannot desire to take this young life, to cut the briefly spun thread of his existence; you cannot wish to rear a gibbet against your sky with that elegant and accomplished form upon it, and that handsome and intelligent face shrouded for the grave. Such a doom cannot be a welcome thought to you. Identify yourselves, then, with him as the waves of sorrow and of peril rolled over his head, and you will reach forth your hands, your all powerful hands, to bless and to save him.

And, gentlemen, now as Harry Crawford Black descends into the town, the other party to this tragedy of blood, of broken hearts and ruined lives, came forth from his home at the other extremity of the place. It is claimed by the able attorney general that he was slain contrary to the peace of the State of Maryland. If so, then he must have been at peace himself with her citizens, and in obedience to her laws. The picture of his peaceful departure from home has been vividly drawn. As a pure work of fancy, it has high merits. The reality, however, was speedily shown when he met the prisoner. When he arose that morning he made a toilet of death, and clothed himself with the implements of destruction. Three loaded revolvers, as the proof establishes, constituted his supply; one in the prepared pistol pocket on his hip, and two in their leather holsters belted around his waist. He sallied forth more heavily armed than any man who had walked the streets of Cumberland since the close of the sanguinary strife between the north and the south. Instead of being a follower of peace, he was a moving machine of war. Instead of being a law-abiding citizen, his preparations were those of the desperate and deadly outlaw. And as he thus prepared himself I ask you to look at him in the light of his previous conduct toward the prisoner; in the light of his conduct as described by Long at the corner of the street, and of his menacing insult at Ferguson's saloon. You cannot mistake his fatal meaning. He was bent on bloody mischief. Black had uttered no threats against him; not one has been proven or attempted to be proven; he did not arm, therefore, for self-defense. He had not been apprised of any danger from the prisoner, except by the suggestions of his own guilty conscience. They told him, perhaps, of the necessity of prompt, determined, and aggressive action. We can only judge, however, by his acts, and they speak in clear and certain tones. When you once saw armies in these now smiling and happy valleys equip themselves with the cannon, the rifle, and the bayonet, and move forward toward the enemy, you knew that the sorrowful heaps of the slain and the wounded would soon cumber the ground and appeal piteously to heaven. So, too, when you behold a citizen in time of peace invade your streets with the most extensive and extraordinary preparations for taking human life, you at once fear and expect scenes of violence and calamity.

Am I answered that Black, too, was armed? Who ever had so much reason to be? May not a threatened life defend itself? He had one pistol; was not one-third as powerful in conflict as his

enemy; he had five balls ready for action. It is admitted by the prosecution that McKaig had twelve, and the testimony shows conclusively that he had eighteen. I have thus traced these parties, described their relations to each other, and their disposition in regard to a collision until I have reached the time and place when and where they met. And here I again deplore your absence from the spot where a personal inspection would give you a more accurate knowledge of the transaction than any discription at this distance. But concerning the leading facts there can be no doubt. Black was on the south side of the street going west; McKaig was on the north side of the street going east; thus they were on the same street, but meeting with its whole width between them. Through Cumberland runs Will's creek, and over it, on this street, is an elevated bridge. The evidence first disclosed the deceased as he was crossing that bridge with the prisoner in full view diagonally to his right on the other side of the street. There they first beheld each other that morning. Every step now assumes the most terrible importance, and is charged with the responsibility of life and death. Who sought the banquet of blood? Who turned from his own pathway to interfere with the course of the other? Not an object was between them to obscure the view. The instant McKaig saw Black he left his own sidewalk immediately at the east end of the bridge, where there was no crossing for pedestrians as at the intersections of streets, diverged obliquely to his right on a line that would bring him to the sidewalk on which the prisoner stood about thirty feet in front of him. He walked rapidly in that direction. Why did he thus leave the even tenor of his way, and bear suddenly down on Black? Why did he not pass on and let the prisoner do the same? Was that Providence, whose moral laws he had mocked and spurned, hovering over the scene, and guiding him to his swift and awful doom? Did the fair and open opportunity tempt him to his own destruction in seeking the destruction of another? He could have let the prisoner alone; but a belief in the efficiency of his arsenal, and a blind and fatal infatuation carried him with defiant confidence into a presence most dangerous to him on that morning—the presence of one who had just emerged from a night of sleepless phrenzy over the injuries, the incurable and burning injuries, he had received from the man who now sought and approached him.

Is it pretended that this sudden movement by McKaig had no hostile meaning? Consider all that had passed between them before; consider all the provocations, the insults and the threats, for actions often utter louder and deadlier threats than words. Consider all the past, and consider the warlike preparation of the deceased, and then determine whether he crossed that street without a purpose. But you are not left to the uncertain field of conjecture. The evidence makes his motives as plain as the light of the sun. The sinister movements of his hands make a perfect revelation of his designs. The cane was in his right hand as he passed over the bridge. Conner, a witness for the State, saw it as well as Davis, a witness for the defense. Conner turned away and saw no more; Davis saw it shifted from the right to the left hand by the deceased as he approached the prisoner. He saw that

right hand, thus relieved of the cane, go back to the hip pocket, and come in contact with a shining object; the polished handle to one of his pistols. Do I mistate the testimony? Would I dare do so even if restrained by no higher motive than the success of my cause? Nothing is more dangerous than to attempt a fraud upon a jury. You have heard every word here uttered, and you quickly resent the effort of consul to mislead you. No attempt was made to contradict Davis; this you know. Others profess to have seen the deceased while crossing the street who were called by the prosecution. Why was not one of them asked in regard to the change of the cane? Because it was known to be true. There was no hope of contradicting this crushing fact. And the motion of the hand for the pistol is equally proven. Is there anything unreasonable in all this? He had betrayed active hostility on former occasions. Why not now? He was fixed for the affray; he never could be readier; he did not know the condition of the prisoner's mind; he did not know that in the prisoner's breast had been boiling a fierce cauldron for the last thirty-six intollerable hours; he did not know that he was himself at that moment the one supremely horrible thought in Black's feverish brain. He thought to confront him unawares, perhaps to brow beat, degrade, and trample him under foot; perhaps to slay him where he stood. Colonel McKaig was a full man in years, large, commanding, and powerful in person. Crawford Black is slight, almost a boy in size as in age. There was the contemptuous confidence of Goliath on the one hand, and the just cause and unquailing heart of David on the other.

Gentlemen, I need not read from books to inform you what the prisoner's rights were when he saw his mortal foe approach him preparing with hasty strides to become his instant executioner. The law of self-defense is written in the heart of man more plainly and powerfully than in the pages of libraries. We here place our feet on its solid and eternal foundations. We build upon it a house of refuge for the prisoner, which will withstand the fury of the storm and the malice of his enemies. He was not called upon to retreat. I spurn the doctrine of being driven to the wall or the ditch, that odious doctrine of degradation, danger and death to the assaulted party. Every inch of ground on which he stood was his own. Who had the right to command him to yield it? The free air around him was his wall, and he who sought to drive him further embraced the peril of his own lawlessness. Nor was the prisoner required to wait for the development of McKaig's designs upon him; he already had full notice. No shot or blow was necessary to make them clearer. He had the right to presume the bloody intentions of McKaig from his previous as well as his present movements, and to act with promptitude. This is the law of the courts, and is sustained by the authority of reason. In it lies all the safety bestowed by the great principles of self-defense. The whole panorama of the past flashed upon the mind of the prisoner at a glance, and called upon him to defend life, honor, sister, and home without the delay of an instant. There was the destroyer, the insulter, and now the threatening assailant.

After carefully examining and comparing the testimony I think

any candid mind will agree that as the deceased stepped upon the side-walk in front of the prisoner, they simultaneously drew their pistols. There are six witnesses who prove that McKaig had drawn when Black fired and two of them were brought here, though not sworn, by the prosecution. The same number or more saw the pistol fall from his hand as the prisoner's first shot took effect. The cane fell from the other hand at the same time. As the evidence shows, the ball had taken effect in the side and had ranged near the spine, producing a shock to the nervous and muscular systems. The prisoner had been able to fire quicker than his antagonist from the fact that his pistol, as you have seen here, is self-cocking.

It is contended, however, that the deceased had not drawn, because Dr. Smith and some others did not see the weapon in his hand, nor see it fall to the ground. This is no proof at all; it is of a character which is always scouted from the presence of positive, affirmative evidence. What one man did not see is often seen by many others. Instances of this rule are very familiar in all the books. In this case, however, those witnesses who did not see the pistol in McKaig's hand, were also blind to his cane. Yet no one disputes that he had the cane. That is conceded by all. They say they did not see the pistol drop at the curb-stone when the first shot was fired; but they admit also that they did not see the cane fall, and yet it is not denied by the prosecution that the cane fell there. If this negative testimony disproves the pistol, it likewise disproves the existence of the cane, although the cane and its fall from the hand of the deceased, the moment he received the prisoner's fire, are accepted facts in this case. But in this connection, why was Dr. Hummelshine not called by the prosecution? A strange and most lamentable feature in a criminal trial is here developed; it oppresses me with sorrow and apprehension. The suppression of evidence more extensive, systematic, and deliberate than I have ever known, here commences. Dr. Hummelshine's name is on the back of the indictment as the witness on whose testimony, and on whose testimony alone, before the grand jury, it was found. He has been here in obedience to the process of the State from the opening day of this court to the present hour. Yet the prosecution did not place him on the stand. The learned prosecutors closed their case without submitting to you the evidence on which the indictment was procured. Such an unnatural proceeding of course fixed our attention on this witness. We placed him on the witness stand before you, and then it was discovered why he had been kept back. He saw the pistol fall from the hand of McKaig at the curb-stone, into the gutter, when Black first fired; thus proving conclusively that it was already drawn for action. These are the words of the original witness for the State. Was it not the clear, plain duty of the prosecutors to call him? Do they wish to obtain a verdict against this young man by hiding the truth from you? Do they wish to shed his blood by fraud? Would they encompass his destruction by low artifice? What explanation is possible here? Have they not denied him the evidence in their own hands which demonstrates his innocence? What is the

object of a trial like this? Is it the mere display of skill on the part of counsel in obtaining a verdict from you without scruple as to the means? The stake here played for is a human life; does the State of Maryland demand its sacrifice with only a partial knowledge on your part of the circumstances that have put it in jeopardy? I appeal to you; you represent this noble commonwealth to-day; you have been mocked and trifled with; you wanted the whole truth and you had not received it when the prosecution closed and rested. They kept back a vital part and hoped that we would never find it. Have you a favorable regard for such a prosecution? Does it commend itself to you? Those who ask and demand a verdict against the life of a fellow-mortal should do so with clean hands and pure hearts. I aim to say nothing unkind of counsel, but not for all the land that lies between the swelling waves of the two oceans would I strive for the conviction of a human being, concealing at the same time within my own mind a fact which would justly acquit him if made known to the jury. Where, also, was young Clark, the boy brought here with so much pains by those who inspire the private branch of the prosecution? You did not hear him testify until we put him, another State's witness, on the stand. He saw McKaig's second pistol drop from the relaxed muscles of his hand when he fell. Out of the mouths of its own chosen supporters this prosecution stands condemned, and Crawford Black stands justified. But more than all this; you were not allowed by the State to know that the deceased was armed at all, that he had a single weapon upon him. The learned counsel for the State ceased their examination without suffering a word or a hint of the truth on that point to reach your ears. Yet they were possessed of all knowledge in relation to it. They not only knew the evidence of Hummelshine as to the pistol at the curb-stone of the south side-walk, but that another was also found by his side when he was raised up in the middle of the street, and the third was yet remaining in the holster of his belt. He was carried into Dr. Smith's office, where his heavily armed condition was disclosed; yet the doctor was not called in chief; only in rebutting, when we had proven all the facts that were within his knowledge by others. Then the brother of the deceased, Mervin McKaig, appears next in this wholesale suppression of proof. He took his brother's belt and pistols and disappeared. Turney picked up one in the street, a man, whose name was unknown to the witness Hall, picked up the other, and the holster yet contained the third. Why was Mervin McKaig made to remain silent in your presence from day to day throughout this entire trial?

This is without a parallel in the annals of criminal jurisprudence. I candidly and firmly believe that it is utterly without precedent in English or American history. The man who became the keeper of those weapons of death, and who alone can tell their exact condition when the deceased fell, sits before you for two weeks, and opens not his mouth. The presumptions are all against a proceeding like this. Evidence that is suppressed is presumed to be injurious to those who suppress it. This is an ancient maxim of the law as well as a proverb of wisdom. You

have a right to know the condition of those pistols immediately after the fatal affray. Were they all loaded, or had one barrel been discharged from the first or second one in the street? Is that the reason that Mervin McKaig made no explanation here? The defendant has the right to that presumption. The law gives it to him and you will not strive to withhold it. It is said that four shots were fired and that the prisoner fired them all. Possibly it is so, but it would have been much easier to decide if the arms of the deceased had undergone the proper inspection and the result been detailed to you. There is a dark and cloudy spot here; all is not plain and fair; there is something to conceal and it is done. Two pistols have been produced here in the rebutting testimony as those of McKaig. How are they identified? Dr. Smith simply says they look like those he saw. Mervin McKaig, then, as now, present, could have removed all doubt by a word, but that word he did not speak. This strange and astounding plan for the conviction of a man by the suppression of facts, however, does not stop even here. Will some one tell me why Turney has remained dumb in this case? He has been here all the time, subpœnied by the State, and doubtless ready to do his duty if permitted by those who brought him here. Several persons have testified that he was seen to take a pistol from the street after the deceased was removed. His name has been repeated over and over again in your hearing, and the fact that he himself was not brought forward to explain his own conduct and to inform you of the condition in which he found that fire-arm is damning and overwhelming to this prosecution. You should not move a single step toward a conviction. You should not even consider the testimony produced for that purpose. You should stop at the very threshold and say to the State: "You have withheld vital and important facts that were under your control; you have not dealt fairly with us or with the prisoner at the bar, and yet you ask us to imbrue our hands in his blood. We decline and utterly refuse to join in such practice and we dismiss your proposition as an insult to our intelligence and sense of justice."

But it has been urged, and will be again, that after the first shot the prisoner might with safety have ceased firing before he did. The perforated coat will be displayed in your sight, and a tongue of vengeance made to speak from every rent. But if Black had reason to believe that McKaig was seeking his life, and was amply prepared to take it, at what point of the conflict was he to pause, and say that the future was secure? He had seen the deceased come to meet him. He witnessed the shifting of the cane, the right hand in deadly preparation upon the pistol, and the act of drawing, all before he commenced his defense. Was anything more needed to convince him that the awful moment had arrived when one or the other must fall; when the fight was to be to the death? And with such bloody hostility proclaimed by the deceased the prisoner was not required to cease the strife that had been forced upon him until he knew that his adversary was disabled and rendered incapable of further attack. Such is the written law of the land as administered in its courts of justice. I announce this in the hearing of their honors on the bench as one of

the great cardinal doctrines of self-defense. Without it, indeed, there would be no self-defense. It would be a delusion and a snare. When, therefore, McKaig, as described by George Garner, sprang into the street after the first fire, and put his hand behind as if to draw another weapon, Black had no reason to believe that his life was yet safe. He could not know that the deceased was hit at all. He still stood and endeavored to continue the fight with the abundant means that were upon him. There was no security or peace for the prisoner until McKaig fell. If McKaig moved from Black, the evidence shows that it was only for the purpose of obtaining time and opportunity to draw a second pistol. Under these circumstances, was the prisoner to cease firing and allow the deceased to turn and fire upon him when he got ready? The deceased, in fact, did turn, and fell with his face toward the prisoner and with the pistol, afterward found by his side, in his hand. His arm had become nerveless, and it was too late for him to execute the last purpose of his life. And as he fell, the last scene in a long drama of secret sin and open shame, of private grief and public ruin, was closed by the sudden pall of death. But as that stalwart form lay there under the early sun of that morning, and as the liberated spirit ascended to the great fountain of life on high, what accusing word of guilt could it bear to the dread presence of a righteous God against Crawford Black? Wherein is his offense against the laws of man or the majesty of heaven? Would you have had him avoid the encounter that was sought; abandon his right to the highway and turn and flee from the face of his enemy? The laws, human and divine, make no such demand, nor does the history of your State. The fame of Maryland is glorious and full of honor in peace and in war. She is a child of the Revolution, and its baptism of fire and blood rested upon her head. Her sons are reputed brave, and her daughters beautiful and virtuous, wherever her name is spoken. The Maryland line met the scarlet uniform and the glittering steel of England, from the darker hours of Bunker Hill to the triumphant glory of Yorktown, in behalf of personal as well as national independence. With what pride you can point to that long and brilliant, though bloody record; it has extorted terms of eulogy from the pens of even reluctant historians and commanded the admiration of posterity. Nor has her soil in modern times bred the spirit of cowardice. She has not infused it into the veins of her children, and no dastards example is in her escutcheon to temp the prisoner to flight and dishonor. He but stood his ground as his fathers did before him against the armed destroyer of life and the ravager of peaceful homes.

At this stage, however, of this dark and melancholy affair the bitter cry, wrung at last from the prisoner's heart, is caught up by the prosecution and urged against him. Yes, when he saw McKaig fall, his lips broke forth for one brief utterance as if touched by the spirit of retributive justice. He thought no more of his own danger; he was unconscious of the peril of his own life as the image of his poor sister, torn from her high estate of virtue, and then spurned and trampled upon, rose before his inflamed vision. It is said that the dying have a swift and far reaching

glance of the realms and records of time, but not more so than this prisoner at that supreme instant had of the pure-faced playmate of his childhood, now the prey, the sport, and the scorn of human perfidy; once wandering by his side in the early dawn of their lives, then expanding into womanhood like a "flower in flushing, when blighting was nearest," then plucked by the ruthless hand of the seducer from the garden of honor and flung away in a little while, withered and dead. He beheld, too, the sweet, bright home of other days when his loving mother smiled in her narrow, but happy and untainted domestic circle; when her days and nights were not filled with weeping and her face was not furrowed with tears; when her voice was not lifted up with lamentations more bitter than "the wail above the dead;" when his father's brow was not bent before the gaze of men because the deceased had covered it with the mildew of shame; when he himself looked forth upon the enticing career of manhood with a proud, high heart and an unblemished name. All this came as a flash upon memory, illuminating all the dear objects of his existence and then giving way as suddenly to the worse than midnight darkness of the present hour. In the twinkling of an eye all was changed, and home, and sister, and father, and mother, and his own youthful hopes and pride all lay together before his eyes in a heap of ruin and misery. The imprisoned pangs of his soul burst forth, and he spoke the fulfillment of human and divine justice. He announced the execution of the decrees of God and man; he proclaimed the fate of the man who had ruined his sister, and pursued her father as a felon because he resented her destruction. Though his own life had been assailed, though he had justly stood upon his defense, yet his tongue gave the true interpretation of the reason that his adversary had fallen. "The wages of sin is death," and they had been earned and were now paid. Am I told that there is no law by which he who rifles a home of its most precious treasures shall be slain? Am I told that the prisoner announced a sentiment for which he should die when he declared his sister's ruin to be the cause of that bloody scene? With magnanimity he waived all considerations of himself, and thought only of those dearer to him than life. For this shall he sup the horrors of a conviction at your hands? What more did he do, even if no principle of self-defense shielded him, than others have done in every age and in every clime? The christian and the pagan tribes of men alike give him their examples and their support. Examine all that is left, all that can be found in every distinctive period of history since the great flood of mankind commenced to flow from a single family in the morning of time, and, with the exception of now and then, a licentious reign like that of Charles II of England, where the object was to cheapen female virtue and license the unbridled lust of the court and its infamous favorites, you can find no precedent for the punishment of the prisoner, no authority to lay your hands upon the defender of your firesides and the protector of your homes against the common enemy of the human race. And I here, in this solemn presence, with the dread issues of life and death intrusted to my care, declare as far as my voice will reach, that he who invades the sanctuary of a home, imposes the impurity of his

debased and brutal desires upon the presence of innocence, breaks the charm and halo of virtue, and defiles the altar of domestic life, forfeits his right of abode in the midst of human society, and deserves to die. The husband's hand is thrice armed for his destruction, the father rises against him in paternal majesty, and the brother may scourge him from the face of the earth wherever he is found. His offense is beyond the reach of pardon, and appeals to heaven and earth combined for redress. It is rank with crime, and invites the lash of chastisement from every virtuous quarter. Nor is this doctrine without that same powerful sanction of which the mighty common law of England was born. That vast and splendid structure is simply the offspring of the customs, and usages of the people of the British empire. Its broad and enduring foundations rest upon the long continued habits and practices of an enlightened race and nation. It springs from the consent and approval of centuries. Has not the principle for which I contend the same great support? Is it not a common law within itself, the eldest born of all laws, ante-dating the days of Edward, the Confessor, and Alfred, the Law-Giver, as wide spread as the light of history, and as universal as the nations of the earth? Has it not the sanction of Jehovah himself in the case I cited from the pages of sacred history? Did it not blaze forth from the heights of Sinai to the uttermost boundaries of space and time? The death of the seducer and the adulterer was decreed in the high courts of heaven when the ages were in their infancy, and the decision has been followed wherever the marriage couch has been spread and the family tie has been woven. The usages of civilization, the uniform conduct of men at the same moment of time, and in different and distant parts of the globe; the rulings of judicial tribunals, and above all, the unvarying, unbroken chain of verdicts rendered by juries since the beginning of human jurisprudence have all combined to establish and consolidate the fatal but just decree. Modern ages have lent their sanction to the customs of antiquity. The span of our own lives in these latter days is crowded with illustrations of the great truth which I lay before you. American history has its faithful story to tell, as well as the annals of the family in Israel, and of every civilized coast and tribe from that hour until the present day.

A quarter of a century ago there occurred in Philadelphia, the city of meek and peaceful antecedents, a full and perfect test of this common law of homicide where a seducer is slain. The Singleton-Mercer case rang out upon the ear of the world as a note of safety to the young and confiding members of virtuous homes, and of warning to those polluted and polluting wretches who look upon woman in the same debasing spirit with which Satan, prowling amidst the splendors and the innocence of Paradise, looked and leered with lustful eyes upon the unsuspicious and angelic movements of Eve. No ingredient of self-defense was there. The bald and naked issue was presented. The arm of the brother was made naked, and his right hand red in the defense of his sister's honor, and a jury of the vicinage and a jury of the world acquitted him with universal acclaim. The District of Columbia has the case of Jarboe with the same cheering and philosophic result.

California spoke within the last two years; and the great central State of Ohio makes her recent contribution in the case of McQuigg and his sister. I might multiply until I would degenerate into the simple narrator of a catalogue of events and names well known to you all. And when we mount up to the unclouded regions of impartial reason and natural right why should not this rule against vice and on the side of virtue prevail? What mitigation can be offered for the conduct of the most evil monster produced from the lowest and most depraved elements of our fallen humanity? Can his crime be lessened or brightened by comparison with any other that darkens our brief pilgrimage beneath the stars? If the door or window of your house is broken, for an article of the meanest value, you may take the life of the burglar. It is only your house and its material contents that are in danger, but so tender is the regard of the written law for property that you may arise and slay to defend it. Do your dwellings contain nothing more valuable and sacred than silver and gold? Are there not gems this moment in the circle of your households, whose luster you would not have tarnished or their presence torn away for all the glittering treasures of the Golcondas, the Californias, and the Perus? Wives, and daughters, and sisters are there, and the loss of one to the embrace of dishonor would rend your hearts in twain, and plant a poison in the cup of life which would never cease to rankle until the grave gave you peace. Yet it is contended that for the criminal monster who might thus destroy all for which you live, and make life itself one long continued and unbearable anguish, there is no personal punishment, no pain for him to suffer; that he may walk your streets in peace and security, and spend his days in ease and comfort while his victim, pale and wasted with sorrow, is sinking into an untimely grave in some lonesome and secluded spot where she lies hidden from the unpitying eyes and unfeeling scoffs of the world. His crime is a thousand fold blacker than murder, yet there are no prisons or scaffolds for him. For the betrayed and ruined woman there is nothing left of life except the pain of living. The joy of existence never comes again. When we see the autumn leaf falling to the ground, and the white shroud of winter spread over the face of the fields we are blest with the certain hope that the soft air of spring will after a little while come back to us and renew in our midst the splendors of this beautiful world; that the fresh, green sward, adorned with flowers, will again spread at our feet, and the deep foliage of the forest will weave its bright canopy over our heads. But to the soul that has loved, trusted, and lost, there comes no second spring. The solemn sky of autumn and the chilling winds of winter alone remain to her. No glad and golden summer awaits her in the future. A scorched and barren desert without verdure, without tree, or plant, or blossom, or shrub, or one single cooling fountain at which to rest in all the desolate pilgrimage, lies before her tired and faltering footsteps. She makes the rest of her journey, too, alone. The lepers taint is upon her in the eyes of the world and friends fall off and avert their faces. And with such a spectacle as this before you, are you willing to say that the man who thus curses the entire existence of one whose

sole offense has been her blind, unreasoning devotion to him should pass unscathed and unwhipped of justice? Such a decision would spurn and trample under your feet the holiest and tenderest interests, affections, and loves of humanity, and would blaspheme all the attributes of a just and righteous God. Does some one, however, who is careful of the life of the destroyer profane this subject with a suggestion of damages as a measure of legal redress? The bare thought stifles an elevated nature with feelings of loathing and disgust. Who can estimate the value of family honor? Who shall lay a price on domestic happiness? Who shall remunerate you for the stolen and defiled members of your household? As well might you attempt to fix the value of a lost and ruined soul in hell. "What will a man not give for his own soul," and will he not give the same, or even a higher ransom, if need be, for the salvation of wife, mother, daughter, and sister? Without them, in their purity, the regions of time and earth would be filled with fiery tortures, and the condition of the fallen spirits in eternity could be no worse. Can you pay the husband for his wife, the son for his mother, the brother for his sister, and the father for his daughter? Can you make atonement to the heart-broken woman herself for violated vows and wanton perfidy? Can she or any of those that love her be redeemed to their original estate by the assessment of damages? A division of property between the social outlaw and his prey may be just, but as a mode of punishment it is vain and void of meaning. Who, also, would have such gain? If a judgment was taken in favor of the husband or father, in whose behalf an action lies, what a revolting acquisition to his fortune it would be? In what way would he expend it? If the husband invests it in "ships that go down to the sea," he makes his ventures into foreign lands and distant waters upon the wages rendered to him by a jury for his wife's infamy. He traffics upon the honor of her whose dear and precious head once laid in its sweet sleep of fidelity upon his confiding heart. If his argosies come home from successful voyages they are freighted with gains founded upon the dishonor of his bed, the debasement of his name, and the overthrow of all his fireside gods. His bills of lading stare at him as the reward of his submission to the lowest depths of degradation ever fathomed by the most abject spirits of the human race. The articles of merchandise, which he unpacks and offers in exchange at his counter, would salute him with the taint of moral death and remind him perpetually of his hideous bereavement. The ghost of his murdered peace would arise and confront him wherever he turned.

If the father accepted a pecuniary award for the shame of his daughter, it would bitterly mock him in all the after years. In what channel of trade would he embark with the proceeds? If he bartered them for lands, his growing meadows, his waving corn, his ripening wheat, and the flocks and herds upon his hills would seem to be flourishing over the dishonored tomb of his lost and undone child. His soul would sicken at the sight of his own prosperity springing from such a source. He would turn away, and though filled with the peaceful precepts of our holy religion, he would invoke the death of the seducer and pray for the blessings

of heaven to rest upon the hand that smites him in his career of wickedness. This is the universal law of the human heart, and the prisoner at the bar simply proclaimed it when he slew the deceased. Such is the meaning of his exclamation when tried by all the experience, instincts, and reason of mankind.

And now, gentlemen, my labors are drawing to a close. I have endeavored to treat plainly and fairly all the material aspects of this painful and most important case. If there is guilt in the conduct of the prisoner, I have not found it. Soon you will discharge the most momentous duty of your lives. In a few hours more you will determine whether Crawford Black shall live or die. There is no intermediate point for one like him. If he is guilty at all, he tells me to say to you that he anxiously and earnestly desires the extreme and fatal penalty of the law. I join in that solemn and awful request. That untainted and unsullied spirit must not herd with hardened felons, or taste the fearful degradation of the penitentiary. The odious garb of the prison was not made for such a form as his. Far rather would I bid him farewell forever on the scaffold than to know that he lived with the stain of infamy upon him. But I will not indulge in such gloomy forebodings. I believe that you approach a cheerful and pleasing task. I believe that your faces will be radiant with happiness as you restore the prisoner to life, liberty, and the embrace of his weeping parents. They reach forth their eager arms to carry him home. They have been lonely, very lonely there for many months. This mother has wept like Rachel for her children because they were not. One has been taken, the spoiler's prey; you will not take the other also. As the aged father in Israel clung to Benjamin when Joseph was gone, so do these afflicted parents yearn for their good and dutiful son, and long to clasp him, free and unharmed, to their bereaved breasts. In full confidence that by your verdict you will grant this blessed privilege, reunite this broken family, and solace their wounded hearts, as far as it may be done by human power, I surrender all, all into your hands. Accept my thanks, each one of you, for your kind and patient attention; and allow me to tender you my best wishes for your future welfare and happiness.

ARGUMENT

OF

HON. MILTON WHITNEY.

MAY IT PLEASE THE COURT, AND YOU, GENTLEMEN OF THE JURY, after the long and patient investigation which you have given to the examination of this case, involving absence from homes, and the daily avocations of life, it is with extreme reluctance that I rise to trespass any further upon either your patience, or your time, and were I to consult my own private convenience and feelings, I would submit this cause into your hands for your final determination. But, gentlemen, I feel that I have a duty to perform from the performance of which I have no right to shrink. It will be my effort, gentlemen, and I trust I may be able to discharge that duty in such a spirit of fairness and candor that it may receive the approbation of your own best judgments. I have carefully examined the testimony in this case, and I have as carefully examined the principles of law and of human action that, it seems to me, should be applicable to that testimony, and my mind has arrived at certain conclusions. It will be my duty to lay before you the process and the grounds upon which those conclusions have been arrived at, and, if I am right, you will arrive at the same conclusions. If I am wrong, you will detect the error into which I have fallen, and be governed accordingly.

Gentlemen, by virtue of the constitution of the State of Maryland, guaranteeing the right of trial by jury, and by virtue of the laws under which we live, and to the strict and impartial administration of which we look for protection in all of the blessings of life, liberty, and property, you have been separated and set apart from your fellow men; and the most important duty that men can be called upon to perform in civil society, this day devolves upon you. Acting upon the solemn responsibility of the oath you have taken, already spread upon the records of this tribunal, you are to determine and decide the issue that is now made up between the people of your State on the one side, and the prisoner whom you have in charge upon the other. That issue involves on the one hand the life or death of the prisoner at the bar, and on the other hand it involves the integrity of our constitution, the vindication of the laws under which we live, the peace, welfare, and protection of society of which you are members, and the fair name and reputation of the community of which you form a part. That same constitution of government that guarantees the right of trial by jury, and has this day set you apart as its administrators, announces and declares that the end and design of all true gov-

ernment is to secure the existence of the body-politic to protect it, and to guarantee protection to every individual member of that community in all of the blessings of life and liberty. If the Government falls short of that, it fails to mount up to the standard of its required duty; it falls short of the discharge of its legitimate function and it proves recreant to the solemn compact into which it has entered with every individual member of that community over which it seeks to extend its power. To secure these blessings, and thus to enable government to accomplish its great end and design, laws are passed and penalties enacted as a part of those laws, and the public peace, and individual security, depends on the observance of those laws, or upon the infliction of those penalties in case of their violation; and just in proportion as those laws are observed, or those penalties inflicted in case of violation, just in the same proportion does that government discharge its duty to society and that society receives its protection, and all the ends and aims of civil government are accomplished.

But, gentlemen of the jury, not only are these laws enacted with these penalties annexed, but tribunals of justice are established in which those laws are to be vindicated, and those penalties inflicted in case of their violation; and thus it is that we stand in this temple of justice, dedicated to its administration, each to perform his respective duty under the solemn responsibility that he owes, to his God, to his country, and to himself.

Now, gentlemen, leaving with you these general observations, I ask you to go with me a moment as we travel backward upon the pathway of time, to the morning of the 17th of October, the morning of the fatal day named in this indictment. Revisit your sister city of Cumberland; it is the hour of early morn; the hours of darkness have passed; the curtains of night have been raised, and the ushering in of the morn has called forth men from their hours of retirement to the stern realities of active life. It is an hour, gentlemen, when passion, resentment, and revenge should be hushed beneath those calmer and holier thoughts that cluster around home and all its associations. Let us enter the dwelling of the deceased and make the acquaintance of the household. We behold there the husband and the father; we behold the wife and the mother; and, beside them, we behold the first and only pledge of their sacred union here on earth. And, gentlemen, that is the household to which the government under which you live, and the laws of which you are this day made its administrators, have guaranteed the protection of which I have spoken. At its head stands one just upon the threshold of active life, in the full vigor of his manhood, equal to the emergencies of war or of peace; he stands there with an arm strong to protect the rights of those whom the providence of God has placed within his keeping, and with a heart warm and large enough to respond to all the duties growing out of that sacred relation. He bids them his morning farewell until the hour of their accustomed meal shall once more reunite them around their frugal board; and ere the clock of time has ticked its thirty minutes, the hand of the assassin has done its work. That wife has been made a widow, that child has been orphaned, and that noble form lies mangled in the dust. That

strong arm has been paralyzed, that generous heart has ceased its beating, and that soul, unwarned and unnoticed, has been ushered into the presence of its God. The mangled remains are removed; no need of a physician; no need of kind and sympathizing friends to cool the parched brow; no need of guardian angels to watch around the dying bed to convoy that soul to its home of immortality on the other side of the dark and turbid stream. That spirit has already passed through the valley, the footsteps of which all tend in one direction. Gentlemen, the story is soon told; the undertaker is sent for, and he does his accustomed work; the city is draped in mourning; its places of business are closed, and the assembled multitude crowd around to perform the last sad office of respect to one who had taken his first outlook upon the world in that his native city. The laborer leaves his implements of labor; the artisan, his workshop; the merchant, his counting-house, and the professional man, his office; each and all to join in the funeral procession, to convey one whom they had only known to love, to the home of the dead. They listen to the clods of the valley as they fall upon the coffin lid, and return home appalled at the sight, and the widow is returned to her desolated hearthstone to spend the first night of her widowhood, and that child only to listen to the echoes of its own voice as it calls in vain upon the sacred name of father. And, gentlemen, the head that devised and the hand that perpetrated this fearful tragedy is confessedly before you for judgment.

Gentlemen of the jury, does the State of Maryland, do its people, does every household, does every man, woman, and child, every father, every mother in the community, ask too much at your hands when they ask you to hold the acknowledged perpetrator of such a deed to the strictest accountability in his defense?

Gentlemen, whatever considerations may have been discussed in this case, and how far soever the counsel on the other side may have traveled out of the record, and discussed questions of a collateral character, having no bearing upon the particular issues involved, I beg you to come with me as we analyze the case that has been presented before you by the testimony in the cause. Strip it of all its theatrical surroundings, and let us lay it bear and naked before you as an American jury, and see where the truth and where the error is.

Now, gentlemen, what is the subject-matter of the inquiry that presents itself to our minds at the very threshold of this case? There has been a great deal said—and I beg you to bear in mind that I do not propose to take any notice of any personal allusions that have been made, or be lead by any remarks from the legitimate examination of the case upon which you have to pass—there has been something said as to the manner in which this question has been presented to you by the introduction of the testimony. The same thing was said to their honors upon the bench. And you will bear in mind, gentlemen, that the Court in giving a decision upon that point, stated precisely the position we had assumed, that in an investigation of this kind it was incumbent upon the State to make out its case, and that the State in so doing had no right or power to anticipate what might be the defense, but when

that case was made out on the part of the State, it was the duty of the defense then to show to the jury, and to the satisfaction of the jury, what that defense was, and it would then become the duty of the State to rebut that defense, if they could, whatever that defense should be. Therefore, gentlemen, so far as all the comments of the gentlemen on the other side are concerned, in reference to the manner in which this testimony has been offered, I simply refer you to the opinion of the Court when the same question was raised before that tribunal.

Gentlemen, here is the indictment that contains the charge upon which this defendant is now upon his trial. It is an indictment found by the grand inquest of the body of Alleghany county. Something has been said about the change of venue to this county by way of complaint that you are now to try this case. I shall have occasion to call your attention to that branch in a subsequent stage of this investigation. I do not now wish to disturb the order of my argument by calling your attention to it, and to the remarks that have been suggested by counsel on the other side now. We are then to look in the first place and ascertain what is the charge against this party! That charge is willful murder. It is not necessary, and I do not purpose to consume your time by the reading of the numerous law books that have been referred to by the counsel on the other side, or to go into that old ancient common law, of which they have had such an abhorrence, and yet, to a large extent, have occupied your time and attention in reading. I propose to do no such thing. I shall call your attention to the laws of Maryland enacted by you through your representatives, expressing the will of the sovereign people of your State.

The statute law of Maryland provides that all murder which shall be perpetrated by means of poison, or lying in wait, or by any kind of willful, deliberate, and premeditated murder shall be murder in the first degree, &c., all other, murder in the second degree.

Now, gentlemen, I might go on and discuss with you, and trace out the history of this legislation, and show you why and how murder was divided into different degrees, but I do not conceive it to be necessary in this case, and therefore I shall save you the time, and myself the exhaustion of so doing. Let us stay by the law as it stands out on our statute books, enacted by yourselves through the agency of your representatives whom you have sent to express the will of the people.

Now, gentlemen, you will find there are two classes of murder: "All murder which shall be perpetrated by means of poison"—establish the poison, and that is sufficient; "or lying in wait"—that is another sufficient ground; "or, by any kind of willful, deliberate, premeditated killing, shall be murder in the first degree." This last means where the specific intent to take life exists.

You understand me, gentlemen, that at the common law, any person who took the life of another being in the pursuit of a felonious purpose, or with intent to do great bodily harm, and by accident, life was taken, then that was murder, although there was no intention to take life. The State of Maryland making the degree says, that where the specific intent is to take life, where

there is that evidence of depravity and corruption of the human heart that can entertain for a moment the idea of taking human life, it shall be murder in the first degree. Therefore, gentlemen, in a case of this kind, wherever the investigation shows the murder to have been committed by means of poison, or lying in wait, or any kind of deliberation which means intentional killing, then it is murder in the first degree. The other kind of murder is murder in the second degree; leaving the definition of murder precisely as it existed at common law; and, therefore, gentlemen, under the Maryland law, where a party is arraigned upon an indictment charging him with murder, a Maryland jury can find either one of four verdicts: murder in the first, murder in the second, manslaughter, and not guilty.

Now gentlemen, considering what I have already stated to be a sufficient explanation of what the law is by which you are to try this party, the statute law of Maryland, by which rule alone you are to be governed in the investigation of the facts, let us come now to a careful analysis of what this case is, and let us answer the first inquiry that presents itself to our mind, "has the State upon its own showing made out a case which brings it within the rule laid down by our law," because if this has been done, and it has not been successfully rebutted, then you have no discretion save to act upon a statute law as it is written, by which you and I are bound and in which we seek protection for ourselves and families.

Gentlemen, on the morning of this fatal occurrence where was Crawford Black? Where was he first found? I anticipate for a moment here, because it makes the connection good. I anticipate a portion of the testimony offered on the part of the defense, so far as the testimony of Mrs. Black is concerned. There is a great deal in that testimony, gentlemen, upon which I would like to comment; but in the argument of this case I shall do precisely what I did with her when she was on the stand. I did not think proper to ask her a single question; she was here as the mother of this party, and she would have been less than a mother had she left any effort undone to have protected, and to have saved that son from the fearful peril which now awaits him, if my view of this case be correct. Mrs. Black tells you—after narrateing the occurrences of the day before and the night before—she tells you that her son, on the morning of that day, left her house. For what purpose? She tells you that he left, saying that he would pay some bills which he had neglected to pay on Saturday.

Now, gentlemen, he was not paying bills in Cumberland on Saturday; he had been engaged at Piedmont with his pay-rolls, his money corresponding to that pay-roll. Where, then, had he been engaged in the making of those payments according to the pay-rolls, in every case the money corresponding to the amount on the roll? She tells you that he left, and that before he left he put on an overcoat. Her attention, therefore, was called to the overcoat. She tells you not only that her attention was called to the overcoat, but that he then told her that it was Mr. Henshaw's overcoat. So that the overcoat upon that occasion, and at that time, was a subject of conversation between these parties. Now, gen-

tlemen, did he put that overcoat on to go to the mines? Did he put that overcoat on to go to the town, or village? She tells you that he started from that house with that overcoat on for the purpose of paying bills, and attending to the usual and ordinary business of the day. What kind of a morning was it? You have heard from the witnesses it was a warm morning, the doors and windows were open, and yet he puts on an overcoat to go about, traveling from place to place in that town, for the purpose of attending to the ordinary affairs and business of life.

Gentlemen of the jury, where do you next find him? You next find him at Mr. Goodman's store; the clerk tells you that he came there and that he was there about five minutes; that he bought some cigars, lighted one, smoked for a time, and then left. And my distinguished young friend, Mr. Price, was very forcible in his remarks as to how far the cigar went to quiet his agitated and disturbed mind. Therefore if anything agitated and disturbed the mind of Mr. Black at that time, applying his counsel's own argument, those agitations must have been reconciled and quieted before he left there.

He then goes down to Centre street; that brings him past the foundry of McKaig. Now, there is no doubt about that. Where do you next see him? Because now we are testing this case; stripping it of all the giddy surroundings with which it has been draped. Where do you next see him? You see him near Mr. Craigs' corner, coming up Baltimore street from the direction of Centre street. Am I right? Follow me as I go. He is seen by Mr. Craig walking up slowly on this pavement until he got about opposite this corner, when he stopped, apparently looking up Baltimore street. Then he turned, he thought, and either went into Mr. Dailey's store, or passed down Mechanic street, which would again lead him to McKaig's foundry.

Now, gentlemen, he had left Goodman's store, and was coming up Centre street; he passed the foundry and came up in that direction; there we see him through the eyes of Mr. Craig a second time. How long was that before this shooting? Mr. Craig tells you it was at least half an hour. Now, where did he go? That is the next subject-matter of our inquiry. Where is he next seen? Mr. Arrick tells you that living upon Centre street, about half way between Baltimore street and the foundry, as he was coming out of his house that morning to go to his work, as he was coming down these steps, he took his watch out of his pocket, and it was 10 minutes to 8 o'clock, and he saw this man Black coming up Centre street, passing that foundry, looking into those windows, and the door of that place. Therefore, gentlemen, he must have gone from the position when Craig saw him, and passed down Mechanic street, gone around the foundry, and been there when Mr. Arrick saw him looking into those windows, which must have been the second time, because Mr. Arrick tells you that that was about 10 minutes before the shooting took place.

I am coming down to details—to facts in reference to this case. We want to prove the lying in wait to bring it within the language of the law of Maryland, and not within the language of the musty law of ages gone by, so much commented upon by the counsel on

the other side. Where do we see him next? We see him next in the vestibule of Mr. Shriver's store. What was he doing there? Mr. Hughey tells you that at that time he had this overcoat on; that he had his hand on his right pocket, and that when he held out his hand to him to shake hands with him. Black extended him his left hand, and being apparently in a hurry to break off the conversation, Mr. Hughey says that he left him, and that he (Black) returned back into the vestibule, or that when he saw him last he was taking a step on to the vestibule. Follow these facts with me, because we desire that this case shall be tried upon the facts *in* the case, and not facts supposed to be, and referred to as being in it. Now, where do we see him again? Why, we see him again on Humbrid's corner. You see (turning to the plat) that is the point near the south side of the street. Bear in mind, gentlemen, that I am correct in this matter; follow me step by step as I go. We find him on that corner, by whom? By Dr. Smith, who, my friend says, was very much excited that morning. He was not excited *then;* nothing had occurred to excite Dr. Smith, or anybody else. Dr. Smith was passing from his house to his office, and in passing down by there he saw Black as he stood upon that corner; Black could have a full view of the bridge, and this side of the bridge a full view up Baltimore street, where McKaig was accustomed to come, walking from his house to his foundry. Mark it, gentlemen, that in regard to these facts I am right. What does Dr. Smith say? He says that he had succeeded in reaching his office; that he had gone inside for a moment, when his attention was attracted by a remark made outside. And as he went to the door to look out he heard the first shot, and simultaneous with that McKaig threw up his hands, and the smoke from the fatal pistol had not raised above the head of either of the parties. Now where did Black go when he left Humbrid's corner? He goes upon the south side of the street, the very side that McKaig always came; the very side that McKaig passed over to on that occasion. Yet the learned gentleman who last addressed you in reference to this case, tried to persuade you that McKaig went out of his usual course and crossed over on that side for the purpose of meeting Black, when all the evidence goes to show that that was his usual and ordinary course, and when Dr. Smith tells you that Black was standing on this side of the street, and not upon that, and therefore, when he (Black) crossed over it brought him directly in McKaig's path.

Now, where is that pistol? My friends have talked a great deal about this being a light overcoat, and all that. It is perfectly immaterial to us; you recollect the testimony; I want to call your attention to it. My friend, Mr. Syester, stated in his opening that it was necessary for him to go armed to protect himself in the dangerous community in which he was, among the miners; that they were of a dangerous character, and, therefore, that it was necessary for him to go armed, and that that accounted for his being armed on this occasion.

"*Against miners*," the very men that he has called before you to establish excellency of character. Gentlemen, he was not going to the mines on that day. He was going about Cumberland to pay

bills, to attend to the ordinary transactions of life. When he left his mother's house with that overcoat on him, why did he need the pistol and the weapon that was found on him at the time he perpetrated this fearful deed? Was it to protect him from the dangerous neighbors by whom he was surrounded at the mines? He was not going there; he was going to his own family customers in his native town for the purpose of attending to the civil and ordinary affairs of life, and yet you find him armed with a weapon equal to a minnie rifle, and carrying it, where? In the pocket of the overcoat that he had put on at his mother's house.

Now, gentlemen, this is a very short time from the time that Dr. Smith saw him upon that corner when this shooting occurred. That shooting has been described to you, gentlemen. It has characteristics—it has surroundings. Is it necessary that I should state more fully the circumstances under which it occurred? And now, gentlemen of the jury, the question comes home to us, has the State by *its* testimony made out such a case as entitles it to ask at your hands a verdict of guilty for the crime set forth in the indictment? Has the prosecution satisfied you that there was in this case a specific intention to take life, or that it was taken by lying in wait? If either, it is murder in the first degree; and, gentlemen, in addition to all this testimony of the prisoner's preparation, the instrument of death that was used, the manner in which it was held and concealed upon his person, looking into McKaig's place of business, looking in recesses past which McKaig must go, then starting to meet him as soon as he beholds him crossing the bridge. In addition to all this, and much more that I might mention, you have before you the terrible manner in which the bloody deed was perpetrated. Allowing his intended victim to pass, he fires the first shot back of the medial line, he then follows him up as he attempts to make his escape, too much paralyzed to defend himself, and fires another shot in the back of his shoulder, and then, as his victim is falling, fires the third, which enters the spinal column, each of which were fatal, and all of which were cowards' shots, fired from behind; and then exclaims, "You son of a b——h, you have got that (what for?) for ruining my sister, and trying to put my father in the penitentiary, and I have another shot for any d——d scoundrel who says I did wrong."

Gentlemen of the jury, was this the taking of human life with intent to kill? Had there been a lying in wait? If either, the law of Maryland marks out your duty, and you have no discretion. The State has brought it within that law, that written law, by which you and I are to be governed and controlled.

Now, gentlemen, what is the answer to this case? Because you heard it announced from his honor on the bench, when the case upon the part of the State had been established, it was then necessary for the defense to put in by way of rebuttal, by way of excuse or justification, such facts as they might rely upon before the jury; and it would be necessary, if they were put in, for the State to rebut them, if they saw proper.

I ask you now what is the excuse? Is a plea of justification set up here by this man Black, or is it a plea that this occurrence took place under such circumstances of provocation as shall reduce it

from what the law of Maryland says is murder in the first degree to murder in the second? What is the defense? If the defense is that of self-defense that amounts to justification. They have offered here evidence for the purpose of satisfying you that this was a case of necessary self-defense; they have offered other testimony for the purpose of showing the condition of mind under which the party was laboring at the time he committed this deed. For what purpose? Why was that testimony offered? It cannot mount up to a justification unless they set up here the plea of insanity, because no matter what a man's feelings may be, no matter what may be the condition of those feelings, or what may have caused them, unless it mounts up to that standard of legal irresponsibility that excuses the man who does the act. Now, that is not claimed here, therefore I am saved the necessity of discussing this question of insanity, because, in the offer of testimony, the counsel on the other side say we offer this testimony to enable the jury to determine from such provocation the grade of homicide committed by the prisoner. It is offered then, gentlemen, not as justification, not as an excuse, not for the purpose of establishing the plea of insanity, that is usually set up in cases of this kind, but offered for the purpose of enabling the jury to determine from such condition of mind the degree of murder of which he is guilty.

Now, what is that testimony offered? Here I come to a very important branch in the consideration of this case. I ask you now, gentlemen, to bear with me for a few moments when I call your attention to this question. What was the testimony offered on the part of the defense for the purpose of showing the condition of this man's mind at the time when he made the attack upon McKaig, and he took this man's life? My friends say that the question of seduction is not in this case. Why? They offered in evidence a piece of paper here, and that is the paper, gentlemen; they offered, (showing the letter), and we objected to it. We objected to it because it did not tend to prove any fact in the cause, because it had no tendency to prove anything. The question went to the Court; and what did the Court say? It was offered as a fact; it was offered to follow it up by showing that that fact was communicated to Crawford Black. Now, mark, they had stated in your presence and hearing, *as a fact*, that that girl, sister of Crawford Black, had had a child, and that the father of that child was W. W. McKaig; they had stated in your presence and hearing, as a *fact*, that he (McKaig) had seduced her, and that these *facts* were communicated to the prisoner for the first time on this Sunday morning.

Now, gentlemen, let me refer you to the ruling of the Court. It was not the fact of seduction to which we objected, only so far as to protect us in our right to rebut any such evidence if offered by the defense, but it was the particular paper offered in evidence, and we objected to it upon the ground that it did not tend to prove any fact material to the issue in the cause—it did not tend to prove anything.

The Court, in delivering its opinion, says, and I quote from its decision: "It is competent to offer evidence tending to prove the condition of the mind of the prisoner at the time of the homicide,

either by proof of communications made to him on the subject of his sister's seduction by the deceased, or by facts and circumstances coming to his knowledge touching that subject, and that the paper offered is admissible upon that ground." Here, then, by this ruling of the Court the door is opened wide to the defense to prove any or all of the facts alleged by them relating to the alleged seduction of the sister or paternity of the child. All these facts they say were realities existing in point of fact, and as facts were communicated to the prisoner on the Sunday preceding the homicide. The ruling of the Court was that all such facts could be shown by the defense upon the ground that they had been communicated to the prisoner, and it was for the jury to say how far, and to what extent, they affected his mind at the time he committed the fatal deed. Here, gentlemen, was a fair, full, and complete opportunity for the defense to establish, by competent evidence, the alleged seduction or paternity of the child. It was in view of this ruling of the Court that we challenged the defense to come up boldly and meet the issue, seduction or no seduction. We had pronounced the charge false and a base fabrication. We had announced before the Court, before the jury, and before the community our readiness to establish, beyond the shade of a shadow of a doubt, that at the time of the deceased's first acquaintance with Myra Black she was not a subject of a seduction, and that at the time her child was begotten (if child she had, which has not been proved,) she was not in a condition to know who was its father. Here then is the case of the prisoner and the State fully presented upon this question of seduction. The prisoner standing by the dead body of his victim—his lips sealed in death—for the first time brings against him this serious charge, a charge that he never would have dared to breathe in his presence while living, and having done this, he now comes into this temple of justice, and through his counsel, before you and before the world, reiterates the charge. Here, in the presence of the aged and sorrow-stricken father, with a heart overburdened with grief, and who is fast wending his way across to the other side of the stream, he boastingly tells you it is true. "I assumed the prerogative of the Almighty; I sent the soul of my victim unannounced to eternity; I draped the young and loving wife in the emblems of mourning, and I robbed that child of its natural protector, and I now stand here and ask you as a jury of American citizens to place a brand upon that child's brow that he shall wear through all time, and be observed by all the world that his father sleeps in a seducer's grave." Gentlemen, it was in view of such an exhibition as this, when the opportunity had been fully and amply given by the ruling of the Court, that we called upon them, in the name of all that was sacred to the cause of justice, in justice to the memory of the dead, in justice to the living he had left behind him, in vindication of their own professional integrity to sustain the statements made by them. It was in view of all this that we begged them to make the effort to sustain the allegations they had made upon this subject. They had said that the deceased was the seducer of the prisoner's sister, and that she had a child, and *he* was its father, and these facts were communicated to the

prisoner on the Sunday named. The Court has said it is perfectly competent for them to prove each or all of these facts; and then it was, gentlemen, that we called upon them to come boldly up and make the effort to prove what they had so boastingly, and the prisoner had so cowardly charged over the dead body of his victim. They knew, gentlemen, that they had the opportunity, and they *knew* that, if successful, it would secure an acquital for their client. How broad the opportunity, and how eager it should be seized; what easier than to place the sister upon the stand and let her pour into the ears of a sympathizing jury a history of her alleged wrongs and ruin; how the very tones of her voice would have been the death notes to this prosecution, and how eagerly the public waited for something substantial to sustain their sympathy for the defense, which sympathy had been enlisted through a stream of public sentiment, manufactured by means as subject to criticism as the sentiment itself.

But, lo! and what is the disappointment to which all are doomed? Has judicial proceedings ever witnessed the like before? With all these damning facts in their possession, their time to act had come, the time to talk had passed, and what do we behold: they offer you a miserably false and mutilated paper, signed by no one, addressed to no one, purporting to have been written six years ago, without any history, nothing to show where it was found, or by whom, or for what purpose it has been retained these six years past; a paper written originally in pencil, afterward drawn over with ink, by whom, or for what purpose it is not attempted to explain. Gentlemen, for what purpose is this offered? It is offered as an existing fact communicated to the prisoner to show the condition of his mind on the Monday morning following. What effect would it have upon your mind, or upon the mind of any reasonable man authorizing him to act, even to the taking of human life. Now, what other fact is communicated to the prisoner on that Sunday preceding the morning of the homicide; why the *opinion* of Mr. Lloyd Lowndes, that McKaig was the seducer of his, the prisoner's, sister.

Gentlemen, before we proceed to a careful analysis of this testimony let us look for a moment at its surroundings, the sources from whence it comes, and then we can the more understandingly examine its character to ascertain the force it should have.

Mr. Lowndes is a relative of the family, and not only a relative of the family, but upon that Sunday sustained the relation of counsel to the prisoner's father, and which relation he now sustains to the prisoner himself. The prisoner was there on this Sunday, as Mr. Syester tells you, to assist in preparing for his father's defense—defense of what? to an indictment for having cowardly shot young McKaig some months before, and which fact must have been as well known to the prisoner as it was well known to every other citizen in Cumberland. Young McKaig in place of taking the law in his own hands had sought a court of justice for a vindication of the truth, he was the only witness on the indictment against the father. The prisoner was in company with Lowndes on Sunday to prepare for his father's defense, and at 8 o'clock the next morning is standing over the dead body of

the only witness on the indictment against the father. Gentlemen, the sequel shows how effectual was the defense prepared. Why was that paper offered? Was not that paper offered as a *fact* in the case, and was it not offered to be proved by Mr. Lowndes that on the day preceding this homicide that paper was shown to the prisoner, and this evidence is admitted as a fact communicated to the prisoner for the purpose of influencing his mind, and showing you how it operated upon it. Now, if it was a *fact* in this case that William W. McKaig was the father of that child, and that fact was communicated to him on the Sunday preceding, it was no more or less a fact than this paper offered in evidence.

My friends on the other side said in their argument that when we got up here, and not only offered to let them, but invited them to go into this question of seduction and paternity of the child, that we did it for the purpose of influencing your minds. We did not do it for any such purpose. When the Court decided they could introduce any fact communicated to this party, and when they claimed that the fact of seduction and paternity of the child was communicated to him on Sunday for the first time, we asked them not to blast this man's name with any such miserable and contemptible document as that offered, that if they had the evidence of the seduction of the sister and the paternity of this child, to come and prove it on the deceased and give us an opportunity to show how utterly false the whole charge was. That is what we desired, and had a right to desire. And I say it is cruel and worse than cruel, to stand now by the side of this dead man's grave and undertake to insinuate that he has violated the peace and chastity of that home, when they had it, as they say, in their power to prove it, and the Court had given them the right to prove it, and did not dare to make the effort. Then, gentlemen, where is the seduction? But they say this is not a case of seduction. They tell you in one breath that seduction is not in this case, and then they ask you to acquit this man upon the ground that William W. McKaig was the seducer of his sister. It is either in or out. If it is not in this case, it is their fault and not the fault of the State. We asked them and invited them, and the Court gave them the liberty of entering into the fullest investigation of that fact.

Now, gentlemen, what did they do? Oh, in the name of justice, in the name of the laws of the land under which we live, in in the name of every household in this community, gentlemen, I inquire what did they do? Have you looked at that paper, gentlemen? Where did it come from? What is its history? Written in 1866. By whom? Addres-ed to whom? Bearing internal evidence of what? The evidences that would show a deeper state of degradation on the part of anybody receiving and acting upon it, than we would imagine ever attached to the sister of the accused, offered either as evidence to prove seduction, or offered as evidence, as a fact that was communicated to this party, upon which he would believe that his sister had been seduced by the writer of such a paper as this. Does it bear evidence that the party that would receive such a communication as that and act upon it was the subject of seduction?

Gentlemen, if the counsel on the other side will allow you, and

you think it is of any weight, or importance in the case, I beg that you will take this letter to your jury room, and I beg you will apply to it a strong magnifying glass. I have one here, and I beg that you will trace the letters and see where in almost every instance those have been traced over the lead-pencil marks with ink. That has been done by somebody? But nobody knows who.

And then, gentlemen, evidently, after having traced over with the ink the rubber is applied, and the pencil marks in many cases rubbed out, or in many cases left, and with a magnifying glass by bringing the principal focus to the lines, you can thus trace distinctly where the lead-pencil marks are, and where they have been traced over by the ink, and where they have failed fully to erase. This is the fact that they offered to show, bearing on this question of seduction, when they had the fact in their possession, as they tell you, that William W. McKaig was the father of the child and the seducer of this girl.

Now, gentlemen, again, who was brought upon this stand when the letter was offered? Why, John M. Resley. What did they ask him? He was asked, "Whose handwriting is that?" He answered, "That is William W. McKaig's." "How do you know?" He was not asked the question, "Are you acquainted with the hand-writing of William W. McKaig?" Then he was dropped and allowed to go off the stand, and he was not brought back to us for cross-examination. He simply stated the fact without laying the proper foundation that this was in the handwriting of William W. McKaig. When was it written? In 1866. Why, William W. McKaig had been away from Cumberland for six or seven years. Who knew his handwriting? And how can you test handwriting, gentlemen? Why there is a certain element of individuality about handwriting that gives you the test of recognition; it is like recognizing a man by the countenance—individuality that stands. When you see the handwriting of a man that you have been familiar with, and have often seen him write, then comes up that individuality that attaches itself to the handwriting itself by which you are enabled to judge. But let that handwriting be tracked over with ink, that individuality is destroyed, and, therefore, I ask what evidence there is in the case to show who wrote that paper, or where it came from? But, gentlemen, this is not all; where was that letter found? Who found it? To whom was it addressed? Gentlemen, let me submit that letter to a jury of twelve women. Do you think they would have any sympathy for a party who would receive such a communication as that, and act upon it? Do you think that a person educated up—no, I would rather say, educated down—to that standard of morality, is a subject for sympathy among refined, virtuous, chaste ladies; is there any evidence of seduction there? And that, too, in response to a note written by one to the party who was the writer of this letter. Why, gentlemen, go to the largest metropolis in the country; go into your most common brothels and it is a production only worthy to be issued from such a place as that. I do not know how you would feel, but I know if I had laid before me a communication like that and it was said that that had been addressed to my sister in response to a note sent by her, I would go to her and inquire often

before I would lay the charge of seduction to any man. And *they* say *we* have been suppressing testimony, because we did not bring a pair of pantaloons here. Our friend, who addressed you yesterday, and all of them have rung the changes upon it, and stated we suppressed the pantaloons, and for a purpose. Whoever supposed the pantaloons would be wanted in a case of this kind. *Suppressed testimony have we?* Give us the history of that paper before you talk of suppressing testimony; you promised to do it in your opening; you promised to tell us where you found it; to whom addressed, and by whom it was written. You have not done a solitary thing of the kind, and yet, gentlemen stand here and braud McKaig as the seducer of this man's sister.

But the gentlemen say that although the question of seduction is not in this case—and not in, gentlemen, because they have shirked the responsibility of the issue, for they had full opportunity to have placed it in evidence before you—that although that is not in, yet he still acted under the belief that such is the case, and, therefore, you are to consider it when you come to consider the grade of this homicide. Acting under the belief; do they wish to make the belief a test? They say that that belief was a reasonable belief, growing out of the communications made to him on the Sunday preceding the homicide.

Well, now, gentlemen, let me call your attention for a moment to the scene. What were the communications made to him? Why, Mr. Lowndes tells you that he had sent for him to prepare for his father's defense. Defense of what? Defense of his father, who had been indicted for an assault with intent to kill, for shooting this young man down in the streets of Cumberland some months before Now, what did he tell him? He told him that, in his opinion, McKaig was the seducer of his sister, and therefore, it would be necessary for that sister to be brought as a witness to testify upon the stand. Now, is Mr. Lowndes' opinion to be a test in cases of this kind? Is he to be judge and jury, and to pass judgment on the man, and then the party who listens, to go out and execute that judgment? Is that the law? Is that the test you wish to establish in cases of this kind? And he, Lowndes, tells him there is a letter. He did not tell him by whom it was written, but he tells him that the letter is at Mr. Roman's house. Then the only other testimony is that he goes to Mr. Roman's house and he says to this party, "read this letter." And what Mr. Lowndes tells you is a remarkable fact, that he did give him the names of Judge Pearre and William W. McKaig in connection with that letter, and yet no effort was made by either of the parties to this conference, to obtain from either of those persons any information about this letter.

Now, gentlemen, standing at this point of the case, let us test the theory of the defense that is now presented by them. Having abandoned the theory of seduction, they now come before you and say, that Black acted under the belief when he committed this homicide, that McKaig was such seducer. Assuming this to be so, we have called in vain for the counsel on the other side to show us the law that such a belief would mitigate, much less excuse a homicide. But I am not now examining this branch of the case

in reference to any question of law, but in reference to the two questions of fact. Did he entertain any such belief, and had he, as a reasonable man, any sufficient ground for entertaining any such belief.

What did this man Black know at that time; what did he know? He knew that his sister, in the month of April, six months anterior, had been sent from home in disgrace. He knew, from the testimony of the mother, that she was of an unchaste character, although he did not know who was the seducer, or who was alleged to have been. He knew, because he had been told on the Saturday preceding, that an occurrence had taken place some time before at the fair grounds between the father and William W. McKaig; and he knew that at that time, and in that public place, in the presence of that father and the people assembled, William W. McKaig had announced that she was a woman of an unchaste character and had denied every thing connecting him in reference to this matter. He knew all these facts; he had been referred to Judge Paerre and to William W. McKaig, in reference to this letter. And what else did he know? Why he knew William W. McKaig; and he knew him as a gentleman of high standing in Cumberland; he knew him as a man of extensive business; he knew him as a generous and a brave man; he knew him as a friend and acquaintance to a certain extent; he knew that he was at the head of a family; a husband, and the father of a child. He knew all these things; and he knew that William W. McKaig was there in the city of Cumberland; he knew that if he went to William W. McKaig, as a gentleman, and a man of honor, and had said to him, "Sir, you are charged with this thing, here is a communication, is this true, or is it not? Tell me; I want to act upon the facts." He knew that he could have gotten the facts from that source without any difficulty at all. He knew another thing; he knew that, notwithstanding his father had shot William W. McKaig down in the streets of Cumberland in a cowardly manner, from behind, that McKaig had declined taking the law into his own hands. Why, gentlemen, he knew that this very man, William W. McKaig——

Mr. NELSON. Mr. Whitney, what evidence is there that Mr. McKaig had been shot down by Mr. Black?

Mr. WHITNEY. Gentlemen, he knew that he was called there to assist in the preparation of the defense of his father, for an indictment had been found by the grand jury.

Mr. NELSON. That indictment is not before this jury.

Mr. WHITNEY. He knew then that William W. KcKaig—whatever may have been the difficulty—he knew that William W. McKaig, instead of taking the law into his own hands, and applying the law of vengeance that has been supplicated here in behalf of this prisoner—he knew that William W. McKaig was then applying to the tribunal of justice for the investigation of anything that might be connected between him and the father of the prisoner. He knew all these facts, yet, on the following morning at the early hour described by the witnesses he is found watching, lying in wait, armed with a dangerous, deadly weapon of the character shown to you on the stand, waiting and waiting for his victim; and then, when he comes within sight, marches forward

to meet him, and then this occurrence takes place. Is that the law to be established in Maryland? Why, my friends on the other side say that there never was a case of this kind where a party had been convicted: there never was a case of this kind tried before; there never was a case of the kind tried before where such an abortive attempt was ever made to crowd in the question of seduction to prejudice the mind of the jury as in this case.

Let me turn your attention for a moment, at this point, to the case of Sickles. My friend has read law here; he cited the case of Simeon and Levi. That is not the first time it has been cited; it has been cited in every one of the seduction cases that have ever been tried in the country; it was cited in the Sickles case, but the gentleman did not read far enough. If it had occurred to the learned gentleman to read further, he would have found that the aged parent, when he was about to depart, inspired by the prophecy that was upon him, and his lips touched, as it were, with a coal from heaven's altar, he said "cursed be their anger, for it was fierce, and their wrath, for it was cruel." That is Jacob's language when he was ascending up to heaven, and about to be gathered to his fathers.

Now, what are the facts in the Sickles case?

Mr. NELSON. Is that the Bible that you are reading from?

Mr. WHITNEY. I am quoting the language of the Bible; I am reading from this trial in order to save time.

Mr. NELSON. If you are reading from the Bible, or quoting from the Bible, I wish you would read from it. We have got nothing to do here with the Sickles trial.

Mr. WHITNEY. The Sickles trial has been referred to repeatedly here, as it has elsewhere, as a test case, because Mr. Sickles was acquitted. Now, gentlemen, you have nothing to do with verdicts of other juries; I do not complain of this verdict; the law laid down in this case is perfectly satisfactory to the State of Maryland. But what was this case? It has been cited as a parallel case to this. Let me read you a brief statement of the facts.

Mr. Whitney proceeded to read. After he had read a few minutes, Mr. Nelson, interrupting, said:

May it please your honor, I must object to this. I do so with great reluctance. It may be all right; but what in the world has the mere annotation of somebody whom we do not know, put to a mere pamphlet of this kind, got to do with the facts of this case before this jury? Is it any portion of the case that the gentleman is reading from? It is nothing in the world but the mere statement of some irresponsible reporter. We do not know whether he is stating properly the facts in the case or not.

Mr. WHITNEY. It is the same work from which Mr. Voorhees read.

The members of the Court taking the matter into consideration, and apparently being a little embarrassed by the objection, Mr. Whitney said: If there is any difficulty in the mind of the Court, I am willing to waive the further reading. I certainly, however, have a right, when counsel refer to the case, to state the facts of that case, and to show that the case is not a parallel one.

The COURT. Proceed, sir.

Mr. WHITNEY. The facts of that case are perfectly notorious, and

every case depends on its own facts. We have called upon the counsel on the other side for facts. My friend in his opening address to you challenges the production of a case of this kind where the party has ever been acquitted. What does it reduce us to? Pause for a moment and reflect—consider what is the law to be established by any such doctrine as this. Let us consider and see what is to be its application. The question of seduction is out of the case. That they say, although they could have proved it had it existed. Don't they know very well that if they could have proved the fact of seduction, plainly and clearly before you, that this family wrong and all these atrocities, said to have been committed, which have been stated here, that they could have acquitted this man? But what have they done instead? They say that they acted on *belief*. What does that doctrine amount to? Let us test it. Gentlemen of the jury, I stand in somebody's way in the city of Baltimore. Some person's sister has fallen, and has, perhaps, given birth to a child. That man goes and says to the brother, "Mr. Whitney has seduced your sister; now, you shoot him, and I will give you $5,000." He shoots me, and is brought into a court of justice; and what does he say? "Why somebody told me that Mr. Whitney seduced my sister, and I shoot him, and a Frederick county jury have established the law, and that justifies me." That is it, gentlemen; you cannot make it anything else. You may talk, and discuss, and cite as much scripture as you please, and it cannot come to anything else. Now, whatever may be your views as men, where the fact of seduction is established under the peculiar and harrowing circumstances surrounding the family, where confidence is betrayed, and where all those feelings of our nature are outraged, what a man will do is for his own conscience to decide. It is a question for him to determine. If he takes vengeance into his own hands, he violates the laws of the land; but under certain circumstances he may be sustained in doing it. When such a question comes before you, as a jury, it will be time enough for you to settle the question as to what you will do in such a case as that. But gentlemen, in the name of common justice, in the name of humanity, in the name of law and order, in the name of all that is dear and sacred to an American citizen, establish no such doctrine as is here contended for; make no man's *opinion* a final judgment, from which there is no appeal, and on which the party may, without notice, proceed to execute, even to the taking of human life. Gentlemen, ponder well the results of such a doctrine. Juries are said be the teachers of public morals; look well to it, the lesson you shall teach by the verdict you may render in this case.

Although our friends have repeatedly told you that seduction is not in this case, and you are not to consider it, yet they have spent hours in reading from the Bible, and painting before you, in the most vivid colors, the character of the offense, and the merited doom of its perpetrator. Grant it all. If the offense is of such a character, and the perpetrator is to be punished with death, is the party charged not to be entitled to a trial, in order to ascertain the fact of his guilt or innocence? Are we living in a country, and under a government, where we have a crime punishable with death, and that without a *trial*, to determine the guilt? Is the opinion of any man, however interested as a relative or legal adviser, to be a sufficient warrant, upon the strength of which the man is to go forth to slaughter and vengeance?

Is this the high moral sentiment that has overridden and obliterated the musty law of our fathers, covered over with the dust of ages, about which we have heard so much from the eloquent gentlemen on the other side? Is this the law that a Frederick county jury is to establish for their own households and their own hearthstones? Rest assured, gentlemen, that however congenial it may be to the atmosphere of Indiana, the home of the distinguished advocate who has advanced it, such a doctrine and such a law will find no response in the hearts either of the sons or daughters of Maryland.

You have been told, in most eloquent terms, that it was better that ten guilty men should escape, than that one innocent man should suffer. Grant it! Did Black act upon this rule when he shot McKaig? Does the higher moral sentiment that the gentleman from Indiana seeks to establish as law, recognize any such rule? He tells you that you are to give a party the benefit of any doubt, and he has read books to sustain the position. Grant it! Did Black act upon this rule when he shot McKaig? Does the higher moral sentiment the gentleman desires to inculcate into the jurisprudence of Maryland recognize this rule? He says you are to give no judgment against this prisoner, unless you have all the probabilities before you. Had Mr. Lowndes all the probabilities before him, when he pronounced judgment against McKaig on the Sunday, and had Black all the probabilities before him on the following Monday morning, when he issued forth, armed to the teeth, to execute the judgment of Lowndes? Did Black give McKaig the benefit of a doubt? The counsel has read to you where the old justices were hung, because they gave false judgments, and did not give the party accused the benefit of a doubt. Did Lowndes give McKaig the benefit of a doubt, when he entered up judgment against him on the Sunday; and, perchance, if from not giving him the benefit of the doubt, he entered up a false judgment? Whom will the learned counsel on the other side designate as the proper tribunal to administer to him the same justice that was administered to the justices of old as a penalty for entering up their false judgments?

Once more, before I leave this branch of the subject, I ask you to ponder well before you establish any such doctrine as has been urged before you in this case. The eyes of the people are upon you; you stand forth to-day as the conservators of the public peace. Stand firm to the law as it is written, and not be carried away by alleged laws not written, and existing only in the imagination of ingenious counsel, who find it necessary to appeal to them to carry through a desperate cause. Remember, gentlemen, that the jury box is the great balance-wheel in the complicated machinery of human government. Let it sustain the integrity of the Constitution, and vindicate the laws of the land.

Now, gentlemen, I am exhausting your patience and occupying too much of your time, for it really seems to me that this whole case is within a very small compass, and I will hasten to the second inquiry that is presented to our minds in the investigation of this cause, and that is the subject of self-defense. *When* did that originate? *Where* did it originate? Did it originate when Crawford Black, on the morning of that fatal day, was lurking about in the pathway of this very deceased for the purpose of taking his life, armed with a

deadly weapon; armed with a weapon of this kind, [showing the pistol to the jury, which is a large navy revolver,] to protect himself *against miners*, going about in his native city to deal with his customers in his ordinary business? Did it originate, gentlemen, when he stood by the side of that dead body, and for the first time announced "That is what you have got for ruining my sister, and trying to put my father in the penitentiary; and I have another shot left for any damned scoundrel who says that I have done wrong." Is there self-defense there? Is there self-defense in the affidavit that is found in the very record in this case? An affidavit made by him in Cumberland, that he could not safely proceed to the trial of this case at that time, on account of the absence of his sister, who was a material witness to prove the paternity of that child, a witness that he has not dared to put on the stand, now that his trial has come up. Gentlemen, do the facts, the living facts that originated at that time, mark out self-defense?

Now, gentlemen, I desire to call your attention for one moment to the coat. This, gentlemen, is the bouquet of the widow and the orphan. You see there how that wound was inflicted. Was it not necessarily inflicted when the arm was raised above the head? You see that wound; you see that wound in the side; you see by the shirt that there is a wound entering the side. Now, these are living facts, that don't depend on living testimony. These are the records that Crawford Black has left by which he is to be judged. Now, what does the doctor say? The doctor tells you that the ball entering the side, entered at a point posterior to the medial line. How was that received? He tells you that its course was downwards and forwards through the body. Where stood the party who fired the shot? These are facts not depending on the recollection of witnesses. Where is the first shot fired on that occasion. What was the situation of the party when he fired that first shot? Why, he waited, in the language of the witness, until McKaig had passed him, until he was entirely off his guard, when he turns round and points the pistol and shoots him there. Now, what occurs after that? What is the evidence? Why, the testimony all shows that simultaneously with the first shot, and before the smoke from the fatal pistol had risen above the head of either of the parties, the deceased threw up his hands in a supplicating position, (nothing in them then, gentlemen,) and staggered from the pavement into the street. The deceased then attempts to cross the street, and Black follows up from behind and discharges another barrel of his pistol; the deceased succeeds in reaching the curbstone at the opposite side of the street, and when, by the post is about to fall, he receives another shot from behind, the effect of which seems to be to rally him for a moment, and he makes another effort to recross the street, and when about midway, in the very act of falling, with his face to the ground, he receives another shot from the pistol of Black, who was then standing over him, which shot entered the spinal column, and he fell a corpse.

Gentlemen, you have this testimony from the witnesses on both sides, corroborated by the locality of the wounds, as testified to by the medical witnesses, and by the blood-stained garments of McKaig that have been exhibited here before you. Gentlemen, what can the admiring friends of Crawford Black find here to awaken their enthusiasm? What can a brave man discover here to hold up to the admiring

gaze of chivalry? What can an American jury find here to sustain the theory of *self-defense?* They were coward's shots, and most cowardly were they inflicted!

The gentlemen on the other side say, when they came to the question of self-defense, that if you have a doubt about it, you are to acquit. I disagree with them in their law. I say it is not the law, but, on the other hand, if the State has made out its case against this prisoner, clearly and fully, and he puts in a plea of justification, he is bound to make good that plea, and if he *fails*, the case of the State stands good and unrebutted, and conviction must follow.

How singular the exhibition of Crawford Black, standing here, and through each of the four counsel who have addressed you, ask to be acquitted upon this question of doubt, repeating and reiterating it in your hearing, reading from the books to show it to be your duty so to do, when he, without a moment's warning, ushered the soul of his victim into eternity, because, as they say in one branch of their defense, he believed him to have been the seducer of his sister, which fact, if he ever believed at all, (and assuming him to have been a brave man, the evidence all shows he never did believe,) he could, in thirty minutes' time, have fully satisfied himself that such belief was groundless, and the *opinion* of Mr. Lowndes was a false and erroneous one.

Now, gentlemen, let us for a few moments come to discuss this question of self-defense. You have these living facts before you, already referred to. Now let us come to the witnesses by which they seek to establish this self-defense. Let us analyze this testimony; we have the surrounding circumstances; these transactions; we have his declaration; we have the affidavit that he made, found in the record; we have the locality of the wounds, and we have the situation of the party as he crossed the street. Let us now analyze this testimony and see where this theory of self-defense is to be found. The first witness they called is Charles M. Medore. Now, he tells you that he was in the store nearly opposite to where this occurred, and that what he saw was through the window, and the window was down; that hearing the first shot he turned around and looked out of the window. Now what does he tell you? He tells you that he saw the pistol, and that when he saw it it was ten feet in the street. Now, I want to test these witnesses, one by the other, and see how they stand the searching test of truth, which you are bound to give. He says he saw this pistol, and described it, attempting to give us the size and character of it as he saw it through that window, about ten feet in the street. He tells you that he went into that office, unbuckled that belt. And tells you another fact. That when that last shot was fired by Black at McKaig, Black was standing in front of McKaig, a fact that is contradicted by every witness in the cause, except one other, offered by the defense, and alike contradicted by the locality of the wounds. Now you are testing human testimony. Let us bring it to the crucible that will bring out the truth. But what does he tell you also? He tells you that the pistol that he did see was the pistol that Mr. Turney picked up. Now, it is proved beyond all question that the pistol that Turney picked up was the pistol that fell from the body of McKaig when his body was raised, and it could not, therefore, have been in his hand. Again, this witness swears that he unbuckled McKaig's belt. But they say on the other side, (to be sure, he swore that he un-

buckled his belt,) but is not his testimony as good as Dr. Smith's, who swore he did not do it? Now, it is a desperate cause that requires counsel to raise a question of veracity between the boy Charles M. Medore and Dr. Smith. Dr. Smith is, I trust, known to some of the gentlemen of this jury. He is a native of your county, a man who has grown gray in the respect, confidence, and love of all the people who know him throughout the section of the country where he has spent his years of toil, in the relief of the pains and sufferings of others. I undertake to say that Western Maryland can produce no man whose head has been whitened by the frost of years with so much honor and so much credit as that of Dr. Smith's. Not that alone. Did not Dr. Dougherty tell you, also, that he was there in that office and that he heard Dr. Smith ask Mervin McKaig to take his papers and unbuckle his belt, and that the doctor saw Mervin McKaig when he unbuckled that belt and put it around his body, at the request of Dr. Smith. There can be no question of veracity between Dr. Smith and Charles Medore. Dr. Dougherty is too well known, as well as Dr. Smith, to admit of that. Now, mark the locality where he locates this pistol. Ten feet in the street, when their very next witness, a colored gentleman, puts it on the pavement, or just in the gutter. Now, the next witness called is Enos Davis, a colored man. I do not wish to comment harshly upon the testimony of any witness, it is a matter entirely within your discretion and judgment; I have my own views about it. For my own part, I do not believe that Enos was there to see anything about the pistol. I think he was on the other side of the street with his horse and cart, which he tells you he had left there. But what does Davis swear to? He swears that he was standing by the corner of the bridge, and says that he saw nothing in this man's hand, but that he saw him put his hand behind his body. Now, Enos Davis was standing by the bridge; Mr. McKaig was walking in this direction and he put his hand behind his body in that direction. Could he have seen anything shine, as testified to by him? He says, however, I saw McKaig when he threw up his hands, and he swears that he saw nothing in them. Now, mark that, gentlemen. What does William Wolf say? We are now testing the accuracy of the locality of the pistol, which they say was the third pistol. Mind you, gentlemen, Medore had testified that he saw the pistol, and that it fell ten feet in the street. Wolf says that the pistol he saw fell into the gutter, and that pistol Turney picked up. Turney picked up but one pistol, so that wherever the pistol dropped that he saw, Turney picked it up, no matter where it might be. We shall see hereafter where that pistol was that Turney picked up.

Now we come to the testimony of John Hipp, the man who went over the fence in the back-yard to avoid being a witness, and failed to succeed. You saw him on the stand. I think it did him more good while he was on the stand than anything else could possibly have done him, unless he had gone to Baltimore and taken one of those new baths recently introduced there. What does he say? He said: "I saw McKaig *running*, and Black after him; McKaig run across the street, and Black followed him; I saw McKaig when he fell; he had a revolver in his hand." Therefore, according to his testimony, he saw a pistol in McKaig's hand when he fell in the street. And he says further: "I saw the pistol in his hand when the second shot was fired." Now,

mark it, he saw the pistol in his hand when the second shot was fired, and he says the second shot was fired about the middle of the street. Compare this with the testimony of Wolf, who saw it fall in the gutter. And this is the man who informed Mr. Peter Yarnell, who called upon him for some information, that if he did not go away he would break his damned neck. He says further that the second shot was fired about the middle of the street, and the third shot was fired as he got on the other side. Therefore, he must have seen the pistol in McKaig's hands in the middle of the street, because he saw the pistol when the second shot was fired, and that was fired in the middle of the street.

Now, we come to the testimony of George Garner, another colored witness, and I leave these witnesses with you. You recollect George Garner, the colored man from Washington. He said that he lived in Washington, but had been in Cumberland several weeks without work, that he left his home that morning, and met a stranger in the street, and stopped him at that hour of the morning, entering with him into conversation. A most remarkable thing. He succeeded in getting a job. He stopped him and asked him about work, being a stranger. He knew the people in Cumberland, because, when I asked him if he knew a man by a certain name, he asked if that was the policeman. He knew a policeman by that name; he had made himself acquainted with that class of the community at least. He knew some of the people of Cumberland, but he did not know this person whom he stopped to talk to that morning. Most remarkable, and this statement that he makes is more than remarkable. He said both of these parties exhibited pistols after the second fire, and he said when McKaig run across the street he put his hands behind his back and tried to pull a pistol out, but could not. Now, compare this statement with the others made by the witnesses examined by the defense. Medore says the pistol dropped in the street ten feet from the gutter; Wolf says it fell *in* the gutter; Hipps says he saw McKaig when he was running; that he had a pistol in his hand, and had it in his hand when he fell. And now comes this man, all the way from Washington, and he says that both parties exhibited pistols, but he saw McKaig when he run across the street, and that he then put his hands behind his back and tried to pull a pistol out, but could not.

Gentlemen, can you reconcile this testimony? And this is the only other witness who testifies with Medore that Black was standing in front of McKaig when he fired the last shot, a fact directly in conflict with all the other evidence in the cause, coming from the prisoner as well as the State.

Then we have the testimony of Charles Clark, a boy, who says that he did not see any pistol in McKaig's hands. He saw the pistol fall during the time, but the pistol he saw fall Mr. Turney picked up. This closes their testimony on the theory of self-defense.

Now, gentlemen, when you come to consider human testimony how many considerations, how many facts, and how many circumstances are to be viewed? This question of human testimony could be discussed at great length, but I am not here for that purpose; it would take too much of your time. They are uncertain, they are unreliable. You have got to look at the honesty and integrity of the witnesses; their appearance upon the stand, and opportunities for observation. Now let us apply that test in this case. In the first place

you have the testimony of Dr. Smith; you know the man or, at least, I trust some of you do. They say that they have the positive testimony upon one side, and that this is negative. They say that where there are two men in a room, and one hears the clock strike and the other does not, that it does not follow that the clock did not strike; that you are to determine that the clock did strike. Such is not a parallel case to this. Here was the same thing to which the attention of these different parties was called. And what does Dr. Smith tell you? He tells you that, simultaneously with the firing, being in full view of the parties, and before the smoke could curl and raise above his head, and while McKaig was throwing up his hands in this imploring manner—describing it—he looked, but he saw nothing in the hands of McKaig. He tells you from that time until the time McKaig's soul departed his body, he was not over five or nine feet from his person. Therefore, it would have been utterly impossible for him to have had anything in his hands without Dr Smith having seen it at the time. Now, how was the locality of Dr. Smith, compared with these other witnesses? What were his opportunities for observation? What are his powers of recollection? Then we come to Dr. Healey. Dr. Healey tells you the same thing, and what were his powers of observation, and what is his integrity in the community, and how much credit is to be given him as a witness on this stand? Then we have the testimony of Mr. Gross, who states to you, gentlemen, that he saw him at the first throwing up of the hand, and that from that time to the time of his death there was nothing in it. Then we come to the testimony of Mr. Enfield. What does he say? He says that he was approaching the body as they were raising it, that he saw this pistol fall from the body, and that that was the pistol that Mr. Turney picked up. Now, he tells you that the pistol that dropped from McKaig's body was picked up by Mr. Turney, and Wolf, Medore, and Clark all tell you that the pistol they saw fall they saw Mr. Turney pick up. Now, these are the facts. Then, you have the testimony of Mr. Cahill, a witness who was examined twice by the other side; a highly respectable gentleman from Cumberland. He says that his impression is that, as he approached the body, he saw something fall from it; but that after the body had been taken in he saw Mr. Turney take up the pistol from the spot where the body had been lying. Now, look at these things; look at these facts. We desire this case to be tried upon the facts. Then we have the testimony of Mr. Moorehead, who testifies to the same thing. The additional testimony of Dr. Smith, who tells you that, as they were raising the body from the ground, he heard something jingle, but he could not tell what it was. But they say why not bring Mr. Turney here? Why didn't we bring Mr. McKaig here? And they stated that he had been here during the whole of this trial. No such thing. Mervin McKaig has been here but one or two days, I believe, during this trial. You try this case upon the testimony that is before you, and, as you are well aware, it often occurs that, as you are going on with the case, the witness is not in court, and Mr. Turney was not in Frederick when this testimony was going on. But what was the necessity of bringing Mr. Turney here when all these witnesses swear they saw Mr. Turney pick up this pistol, and tell you where the pistol was when he did pick it up.

Now, gentlemen, where did this self-defense originate? Here is

Mr. Wolf here, a witness brought into Court for the purpose of sustaining this theory of self-defense. There is Dr. Healey. They lived side by side; they frequently compared notes. Dr. Healey tells you, in reference to this occurrence, that they talked this thing over; and yet Dr. Healey tells you that he never heard it whispered about a pistol in Mr. McKaig's hands until he came into this court. Now, is not that remarkable? Is it not singular? How, upon any known principle of human action, is it to be accounted for?

I say again, this question of self-defense was an after-thought, not dreamed of by the respectable people of Cumberland, till the commencement of this trial. The gentlemen say we have not brought any person here to attack the character of their witnesses upon the question of self-defense. The answer to that is that they had no character to attack; no one knew them as to character, either for good or bad.

And now, gentlemen of the jury, let us pause for a moment, and pass in review before our minds the ground over which we have traveled, and the conclusions to which the human judgment is necessarily driven by a proper examination of this cause. We have shown that the deceased, W. W. McKaig, on the morning of the day named in the indictment, in the city of Cumberland, came to his death by the hand of violence in a most cruel and revengeful manner, and in a way that could only have been prompted by a coward's heart. We have shown you that this deed was perpetrated by the prisoner, Crawford Black; that he did the deed with a *specific intention to take life*, and that the taking of that life upon that morning was preceded by such lying in wait as the statute law of your State solemnly enacts shall be murder in the first degree. Standing upon this law and these facts the case is plain and clear.

Our attention has been next called to the answer attempted to be set up to such a case as this, and in that connection we have examined the question of seduction, the theory that he acted under that belief, and the theory of self-defense. Upon this question of seduction I have shown you, gentlemen, that, for the first time in the history of this case, when they were called upon to *act*, when the time of talking had passed, and the time for *action* had arrived, and they had been told by the ruling of the Court in relation to the letter, that they were at liberty to go into evidence of those facts connected with the charge of seduction communicated to the prisoner, we are then gravely told by the counsel on the other side, for the first time, that the question of seduction is not in the case, and they think, from the effort to prove it—for you are to bear in mind, gentlemen, that while the Court said that seduction, as an issue to be tried, was not in the case, they also said that, as a *fact* which had been communicated to the prisoner on the Sunday, it *was in the case*, and as a *fact* so communicated it was admissible in evidence, the same as the letter. Now, while I am here to confess that I am as yet unable to understand clearly the legal principle upon which that letter is made admissible, I am here to say that the ruling of the Court, making that letter admissible, opened wide the doors to the prisoner's counsel to make good their groundless assertions, uttered upon all occasions during the trial, and though urgently requested by the prosecution, they as steadily and persistently declined to enter. Driven from this stronghold of their defense, we have next examined their position as they entrenched themselves behind the theory that he acted under that belief; and we have

shown you that, from the evidence, it is impossible he could have entertained any such belief at the time he committed the homicide; and that no reasonable grounds existed for any sane, sensible man to have entertained any such belief. We might have gone further, and shown you that, had he even acted under such a belief, it would be to him no shield of protection under the law, but would be only evidence going to show a motive for committing a cruel and revengeful deed. But, gentlemen, in a case like this, so barren of evidence to support the alleged facts, it seemed to me but an insult to your intelligence to consume your time and exhaust your patience in reading from the law books, for the purpose of showing what is a legal provocation, which, if acted upon at the moment, may serve to reduce the crime from a higher to a lower grade. No such legal provocation existed in this case, and none has been attempted to be established. Passing from this question of *belief*, we have next examined the theory of self-defense, endeavored to ascertain where and when it originated, and to show how entirely inconsistent it is with the reliable testimony in the cause. We have seen how utterly inconsistent this defense is with that which was so boldly announced in the opening statement of Mr. Syester; how the two are necessarily antagonistic one to the other, and how utterly unreconcilable it is with the statements of the prisoner, when he stood by the dead body of his victim, with everything fresh upon his mind, and before time had been allowed for able and ingenious friends to manufacture a defense. Having done this, gentlemen, in my humble judgment, the case is before you in all its bearings. Its legitimate points of argument have been presented, and the other matters upon which so much time and eloquence have been expended are but foreign and collateral to the real and true issues in the case. I am well aware, gentlemen, how, in desperate causes, able and ingenius counsel seek to raise false issues, that may serve to disturb and distract the mind of the jury, and endeavor to lead the counsel upon the other side into a discussion of those rather than the true questions involved in the decision of the case. Gentlemen, I, for one, have no intention of being thus lead into such an error, and be drawn from a consideration of the plain principles upon which this cause should be determined. I have endeavored to lay those principles before you, and upon you, gentlemen, must rest the responsibility. But, gentlemen of the jury, many collateral questions have been brought into the argument of this cause by the counsel upon the other side; and allow me to say—and I say it with the greatest respect to the distinguished ability and learning represented upon the other side—that, in my humble judgment, their entire arguments, with but slight exceptions, have been devoted to a discussion of these collateral matters, that are foreign to the true issues in this cause.

Before leaving the case in your hands, however, gentlemen, it is proper that I should call your attention to some of those suggestions that have been made, and I beg you to bear in mind that I do it not as a matter of argument of what I conceive to be the true questions involved in the merits of this case, but to caution you lest your minds may have been disturbed by their introduction into the case. First it has been loudly declaimed against that this cause has been removed from Alleghany county to this for trial. And pray, gentlemen, what have you to do with that fact? How does that bear upon the question

of guilt or innocence? What element, either in point of fact or law does that removal furnish you, to assist you in arriving at a correct conclusion? But it is said that the prosecution was afraid of the public sentiment of Cumberland. Gentlemen, he was not to be tried at the bar of public opinion; that had given forth its verdict on the day of the burial, when the native city of the deceased was dressed in mourning, her business suspended, and her population turned out *en masse* to attend his funeral. But, gentlemen, he was to be tried before twelve men, eight of which had been selected, when the State's attorney of that county made his affidavit that he believed the State could not have a fair and impartial trial. It has been asked why should this wealthy and powerful family, the McKaig's, seek some other locality. Gentlemen, they had no more to do with it than either one of you upon this panel; they had no voice in the matter. It was the action of the State through its official, acting under the responsibility of his official oath, and adding to that his special affidavit that, in his opinion, a fair trial could not be had before the men already selected. And, gentlemen, the counsel who last addressed you, Mr. Voorhees, has even gone so far as to announce it as his opinion that the law authorizing such a removal is *unconstitutional*, and he has cited from that instrument to show that every man is entitled to be put upon his trial in the locality where the occurrence took place. Gentlemen, is it possible that the learned counsel has forgotten that the very instrument he reads from, the constitution of Maryland, guarantees this right of removal; that it is a right standing higher than any mere law of the legislature—it is a constitutional power, and if the State's attorney of Alleghany county had failed to call into exercise that power, in a proper case, he would have been recreant to his duty and false to the oath under which he acted. Gentlemen, it is nothing new in the history of Maryland. It has been done by her former attorney general, when eleven jurors were sworn, and the Court then asked by that officer if it was expected of him to lay the case before that jury. But what, gentlemen, have you to do with this question? The prisoner is constitutionally here, and you are sworn to try the case upon the law and the evidence. Will you do that, or will you devote your time in trying the propriety of the action of the State's attorney of Alleghany county, and the court of that county in removing this case. No, gentlemen, this is one of those false issues they have attempted to raise. Let it not, like a false light, serve to mislead your judgments.

But, gentlemen, another thing has been commented upon, and that is the presence of the McKaig family during the trial. Gentlemen, this is no common and ordinary case; the life of this son and brother has not only been taken, but an unauthorized and unjustifiable attempt has been made to throw over his grave the mantle of shame, and they are here, in this temple of justice, as their son was, when he sought a judicial tribunal to vindicate the truth. Gentlemen, that effort cost him his life; but I can say to the counsel upon the other side, that come life or come death, while that aged and sorrow-stricken father, that bosom-companion of former years who has traveled so far onward with him in the pathway of life; those brothers, bone of the same bone, and flesh of the same flesh, nursed at the same breast, rocked in the same cradle, and taught the same prayers beside the same mother's knees, so long as they shall live not a stone will be

left unturned to vindicate the memory of the dead and do justice to the living he has left behind.

No, gentlemen, if W. W. McKaig had never appealed to a tribunal of justice to have the truth vindicated, you never would have been called upon to try this case. He did call upon it, and it became necessary for a defense to be prepared, and it was prepared, and presented points of brevity and cruelty never before excelled in the history of civilized society.

Again, a day and a half was consumed by the defense in his effort to establish a good character. In some cases of extreme doubt, I admit, this becomes of the utmost importance, and I would not be understood as underrating its full value; but in a case like this, how far does it bear upon the true issue involved? The fact of the killing has been proved, it is admitted. No probabilities are to be weighed and considered, in the weighing of which character may be considered. An act admitted to be done is the same whether committed by a man of good, or by one whose character is unknown. I can not better illustrate the little importance to be attached to this than by referring you to the ruling of the Court (Judge Bowie dissenting) when we offered in evidence the good character of the deceased. They had offered evidence of good character of Black to rebut the theory of the State, that he made an attack upon McKaig; they then put in the plea that McKaig made an attack upon Black, and upon the same ground we offered the same evidence, to rebut the same theory, and the majority of the Court ruled it out. If the Court had supposed it of much force in behalf of the prisoner, they certainly would not have denied it to the State, when in the one case it stood precisely upon the same legal grounds as it did in the other.

Gentlemen, I have briefly called your attention to some of these collateral matters that have been brought into this case. I trust I have not done it in such a way, and to such an extent as to lead your minds from the true questions that are involved. There is much more I would like to say, and many comments I would like to make, especially upon the opening statement of my friend, Mr. Syester; but I feel such a course would serve rather to confuse than enlighten, and I must, therefore, leave this case in your hands. Gentlemen, a terrible crime has been committed, human rights have been trampled upon, the laws have been grossly violated, and society has been outraged. A fellow-citizen, in the prime of life, in the full vigor and strength of his manhood, one beloved and respected by those with whom he had been associated from his boyhood, has been cut down in the public streets of your sister city, Cumberland; a homicide unparalleled in cruelty and ferociousness has been committed upon one of her leading citizens, a man largely engaged in business, the head of a family, and a most useful member of society; and, gentlemen, the perpetrator is before you. Do we live in a land of law and order? Is human life of any value? Has it any security? Have our homes any protection? Will the government under which we live discharge its obligations? Shall we continue to pay taxes to support our courts of justice? Is a premium to be paid for lawless violence? Is this fearful tragedy committed in Cumberland to be ended in a disgraceful farce in Frederick? Gentlemen, in the verdict you shall render will be found an answer to these several questions, and to that verdict will the people of your State look for the lesson they are to be taught. For its teachings they

will hold you responsible, and its influence will descend upon your children and your children's children. Pause ere you deal lightly with the rights of society, and reflect, lest you allow the Government under which you live to prove recreant to its most solemn obligations. Gentlemen, I have endeavored to discharge my duty in fairness and candor. I have left much unsaid that I should have said, and I must trust to you to supply the omissions; and I trust, gentlemen, that you will so discharge the high and responsible duties resting upon you, that when the wintry winds of fourscore years and ten shall have whitened your heads with their frosts, when the heavy hand of time shall have bowed your forms, and your tottering footsteps shall linger upon the confines of the grave, when, according to the laws of nature, you shall begin to live amid the memories of the past, forgetting the things of yesterday and remembering those of years gone by, you may look back upon this scene and thank your God that you have been the humble instrument in his hands of upholding the dignity of the laws, and vindicating the immutable principles of justice and of truth. And I trust that the verdict you may render shall be such an one as shall carry a sense of security to every household in the land, and shall stamp you as men, who, knowing your duty, dared perform it.

Gentlemen, the case is in your hands.

THE ACQUITAL.

And now we come to the last day's proceedings. It is the 10th day of the trial and will be the last. A few hours and the prisoner walks forth free among his fellow men, or is doomed to an early, awful death. He will soon step from the prisoners box to the enjoyment of liberty and the cordial congratulations of a large circle of friends, or will leave it to ascend the giddy, terrible height of the scaffold. It is a clear, beautiful day, the 21st of April, 1871, and what will be the result of this long investigation will soon be revealed to the throng of anxious inquirers present.

Long before the hour designated for the opening of the court the largest crowd ever witnessed in the hall of justice in Frederick county had gathered there, and hundreds pressed the outer door, unable to gain entrance. Within the bar were many distinguished legal gentleman from different parts of the country, and a number of Senators and Members of Congress, taking advantage of the adjournment of Congress, had arrived to witness the *finale* of this important trial.

As the bell in the court-house dome announced the hour of nine, the three judges entered. At ten minutes after nine Chief Justice Maulsby let fall the gavel, and breathless silence at once reigned over the vast assembly. Justice Maulsby asked if all were ready to proceed, and directed Mr. Voorhees to open his case to the jury.

Mr. Voorhees arose, and paused as though oppressed by a sense of the great responsibility resting on him—at once all eyes of that vast concourse were riveted upon the spot where he stood—and, for a moment, the stillness was absolutely appalling. Then, as it were, gathering up the resources of his splendid genius and marvelous oratory, in a clear, firm voice, Mr. Voorhees proceeded to address the jury, dwelling first somewhat at length upon the remarkable character the boy at the bar had developed, even by the mouths of adverse witnesses. With matchless eloquence and consummate skill he reverted to the difference in position and circumstances of the families of McKaig and Black—the influence and wealth of the one, the simple integrity and respectability of the other. For three hours and thirty minutes he held the audience spell-bound, moving them often to tears. As he closed, a very audible movement of applause was promptly checked by the Court, and Justice Maulsby proposed a recess for a few minutes.

At fifteen minutes before one o'clock the court re-assembled, and in

five minutes Mr. Whitney began his closing address to the jury, speaking two hours. The case was given to the jury a few minutes before three o'clock, and they retired.

That was a moment of profound and eager interest. None who witnessed but shared, none who shared can ever forget. Amid the intense emotion and excitement of that hour, perhaps no one was, outwardly at least, more self-possessed and composed than the prisoner, who sat pallid, but calm and quiet.

At five minutes after four o'clock the bailiff entering, notified the Chief Justice that the jury had agreed upon a verdict. Justice Maulsby directed them to be brought in, and they entered at eight minutes after four o'clock.

When they were seated the clerk directed the prisoner to stand up. He stood erect and firm, with his clear black eyes looking full into the faces of the jurors, the audience scarcely seemed to breathe, and the stillness was painful when the jury were asked if they were agreed upon a verdict. The reply being in the affirmative, the clerk said: "Gentlemen of the jury, look upon the prisoner at the bar and say is he guilty or not guilty?

In a distinct voice the foreman, Mr. William Feaga, replied, "NOT GUILTY!"

The pent-up emotions of the crowd could be no longer controlled by the forms of judicial demeanor. One deafening yell shook the building from dome to foundation, and like a resistless torrent the entire assembly rushed forward, as if to seize him in their arms, and bear him out of the court-room. Sheriff Lamon embraced him with tearful affection. Releasing himself as soon as possible from the crowd that seemed unable to find words to express the admiration and deep feeling with which his conduct, during the trial, had inspired them, Harry Black rejoined his mother, who stood weeping within the bar. The joy of that gentle, much-enduring mother's heart, who can tell, in this, the hour of her son's triumph, the hour that gives him back to her almost from the jaws of death? Let us draw a veil before emotion so sacred—joy so profound.

Going to the hotel from the court-house he was visited by hundreds of friends and acquaintances eager to congratulate him, and to assure him of his deep, firm hold upon their esteem and affection. By his countrymen and his country's laws he has been purged of the crime for which he was tried. He, with freedom, treads the walks of peaceful life again by their consent. In true christian spirit, let the past, with all its fearful memories, be forgotten by all, and the future looked to as the time wherein all wrongs may be atoned and youthful virtues ripened into holy attributes.

MILTON WHITNEY. ESQ